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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184978
Party	Plaintiff McNeil-PPC, Inc.
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Date	01/24/2011
Attachments	1 of 2 Opp Notice on Reliance on App Dep Testimony 107-108 (F0740456).PDF (60 pages)(1715877 bytes) 2 of 2 Opp Notice on Reliance on App Dep Testimony 107-108 (F0740455).PDF (71 pages)(2166953 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**OPPOSER'S NOTICE OF RELIANCE
ON APPLICANT'S DEPOSITION TESTIMONY**

Pursuant to Rule 2.120(j) of the Trademark Rules of Practice, Opposer McNEIL-PPC, Inc. ("Opposer") hereby makes of record and notifies Applicant Walgreen Co. ("Applicant") of its reliance on excerpts from the discovery depositions of Applicant's witnesses as follows.

A. Excerpts from the discovery deposition of Robert L. Tompkins, taken April 16, 2009, as specified below and attached hereto as **Opposer's Exhibit 107**:

- Page 7, line 8 through page 9, line 13
- Page 20, line 12 through page 21, line 1
- Page 21, lines 9-13
- Page 22, line 14 through page 23, line 2
- Page 25, lines 12-16
- Page 26, lines 11-16
- Page 36, lines 1-4
- Page 43, lines 12-15
- Page 61, lines 5-19

- Page 62, line 21 through page 71, line 21 [Applicant has designated page 63, line 7 through page 71, line 21 as “Confidential”]
- Page 75, line 15 through page 76, line 2
- Page 97, line 11 through page 98, line 7
- Page 99, lines 11-22
- Page 128, lines 1-11
- Page 140, line 22 through page 141, line 10
- Page 158, line 17 through page 161, line 5 [Applicant has designated this excerpt “Trade Secret/Commercially Sensitive”]
- Page 184, lines 23 through page 185, line 9
- Page 186, line 12 through page 188, line 20 [Applicant has designated page 186, lines 15-18 as “Confidential”]
- Page 189, line 6 through page 191, line 7 [Applicant has designated page 189, line 10 through page 191, line 7 as “Confidential”]
- Page 191, line 23 through page 192, line 3
- Page 203, line 20 through page 205, line 2 [Applicant has designated page 203, lines 24 through page 205, line 2 as “Confidential”]
- Page 206, line 18 through page 207, line 10 [Applicant has designated page 206, lines 18-24 and page 207, lines 5-10 as “Trade Secret/Commercially Sensitive”]
- Page 207, line 24 through page 208, line 23 [Applicant has designated page 207, line 24 through page 208, line 23 as “Trade Secret/Commercially Sensitive”]
- Page 212, lines 16-21
- Page 213, lines 3-6

- Page 220, line 13 through page 223, line 22
- Page 227, line 2 through page 228, line 12
- Page 229, lines 5-14
- Page 233, line 18 through page 234, line 12
- Page 234, line 20 through page 236, line 12

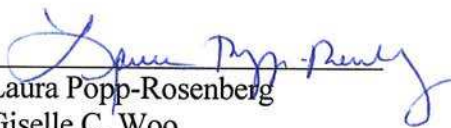
B. Excerpts from the discovery deposition of Daniel Potts, taken May 1, 2009, as specified below and attached hereto as **Opposer's Exhibit 108**:

- Page 6, line 22 through page 7, line 11
- Page 7, line 23 through page 8, line 8
- Page 20, lines 2-19
- Page 25, lines 14-24
- Page 27, line 15 through page 29, line 12
- Page 29, line 21 through page 33, line 13 [Applicant has designated page 32, lines 11-14 as "Confidential"]
- Page 36, line 1 through page 41, line 12 [Applicant has designated page 36, lines 1-21 and page 37, line 28 through page 38, line 24 as "Confidential"]
- Page 41, line 24 through page 42, line 17
- Page 43, lines 11-21
- Page 44, line 11 through page 45, line 10
- Page 46, lines 15-24
- Page 72, line 17 through page 75, line 10
- Page 77, lines 8-12
- Page 82, line 24 through page 83, line 18

- Page 87, line 13 through page 88, line 15
- Page 92, line 18 through page 93, line 11
- Page 96, line 22 through page 97, line 8
- Page 119, line 18 through page 121, line 13 [Applicant has designated page 119, lines 18-20 as “Confidential”]
- Page 140, lines 3-12
- Page 154, line 10 through page 155, line 15
- Page 157, lines 4-7
- Page 161, lines 13-14
- Page 166, line 21 through page 167, line 1
- Page 167, lines 9-20
- Page 176, line 8 through page 177, line 2
- Page 177, line 20 through page 178, line 4
- Page 183, line 16 through page 184, line 15
- Page 184, line 22 through page 185, line 9
- Page 189, lines 3-6
- Page 213, lines 13-18

Dated: New York, New York
January 24, 2011

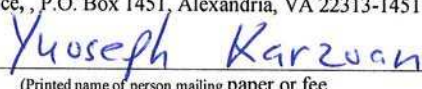
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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Certificate of Mailing

I hereby certify that on January 24, 2011, this correspondence is being deposited with the United States Postal Service via Express Mail No. 815844455 in an envelope addressed to the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on:


Yuoseph Karzwan

(Printed name of person mailing paper or fee)


(Signature)

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Opposer's Notice of Reliance on Applicant's Deposition Testimony** to be served via First Class U.S. Mail, postage prepaid, in an envelope addressed to counsel for Applicant, Caroline L. Stevens, Esq., Leydig, Voit & Mayer, 1420 Fifth Avenue, Suite 3670, Seattle, WA 98101, this 24th day of January, 2011.



Giselle C. Woo

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**EXHIBIT 107
TO
OPPOSER'S NOTICE OF RELIANCE
ON APPLICANT'S DEPOSITION TESTIMONY
(REDACTED FOR CONFIDENTIALITY)**

The deposition of ROBERT TOMPKINS, called by the Opposer for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States Patent and Trademark Office pertaining to the taking of depositions, taken before BARBARA A. DeMICCO, C.S.R. No. 84-2946, a Notary Public within and for the County of Lake, State of Illinois, and a Certified Shorthand Reporter of said state, at Building 104, Second Floor, Walgreens, 104 Wilmot Road, Deerfield, Illinois, on the 16th day of April, A.D. 2009, commencing at 9:21 a.m.

1 PRESENT:

2 FROSS ZELNICK LEHRMAN & ZISSU PC,

3 (866 United Nations Plaza,

4 New York, New York 10017,

5 212-813-5900), by:

6 MS. LAURA POPP-ROSENBERG,

7 appeared on behalf of the Opposer;

8 LEYDIG, VOIT & MAYER, LTD.,

9 (Two Prudential Plaza, Suite 4900,

10 Chicago, Illinois 60601-6731,

11 312-616-5600), by:

12 MS. CAROLINE L. STEVENS,

13 -and-

14 WALGREEN CO.,

15 (104 Wilmot Road, MS No. 1425,

16 Deerfield, Illinois 60015,

17 847-315-4640), by:

18 MR. FRANCIS C. KOWALIK,

19 appeared on behalf of the Applicant.

20
21 REPORTED BY: BARBARA A. DeMICCO,

22 C.S.R. No. 84-2946.

23

24

1 09:28:38 Q. Are you currently employed?

2 09:28:39 A. Yes.

3 09:28:40 Q. Who is your employer?

4 09:28:42 A. Walgreen Company.

5 09:28:43 Q. Do you mind if I just call them

6 09:28:47 Walgreens or is that a fo pau here?

7 09:28:49 A. No, Walgreens is fine.

8 09:28:51 Q. How long have you been employed by

9 09:28:53 Walgreens?

10 09:28:54 A. 20 years.

11 09:28:55 Q. What's your current title?

12 09:28:58 A. General merchandise manager for health

13 09:29:03 and wellness.

14 09:29:05 Q. How long have you been in that

15 09:29:07 particular position?

16 09:29:08 A. Seven months.

17 09:29:10 Q. What are your basic responsibilities in

18 09:29:20 that position?

19 09:29:22 A. Responsible for the procurement and

20 09:29:26 merchandising of those categories of goods that are

21 09:29:32 in my division.

22 09:29:33 Q. And what are the categories of goods

23 09:29:35 that are in your division?

24 09:29:37 A. They include cough and cold, allergy,

1 09:29:41 pain and sleep, vitamins, diet, incontinence, adult
2 09:29:52 nutrition, baby which includes baby diapers, baby
3 09:30:00 sundry and baby formula, first aid, health care
4 09:30:07 appliances, sanitary, and fem hygiene.

5 09:30:17 Q. Any other product categories that fall
6 09:30:22 under your responsibility?

7 09:30:29 I know that was a long list.

8 09:30:29 A. Yeah. Ointments. That's everything.

9 09:30:40 Q. What falls in the category of health
10 09:30:43 care appliances?

11 09:30:44 A. Those would be heating pads, massagers,
12 09:30:49 foot baths and, you know, foot care is also. I
13 09:30:55 forgot foot care. It's a long list.

14 09:30:58 Q. Yes, it is. What falls under the
15 09:31:03 category of sanitary?

16 09:31:03 A. Tampons, liners, and maxi-pads.

17 09:31:09 Q. You said you have been in this current
18 09:31:25 position for seven months; is that correct?

19 09:31:27 A. Yes.

20 09:31:27 Q. What position were you in immediately
21 09:31:29 preceding that?

22 09:31:30 A. Divisional merchandise manager for
23 09:31:34 OTC-1.

24 09:31:36 Q. What is OTC-1?

1 09:31:41 A. That's over-the-counter drugs.

2 09:31:48 Q. And what drugs would fall into the
3 09:31:52 category of over-the-counter drugs?

4 09:31:53 A. Those would be cough and cold, pain,
5 09:31:58 sleep, vitamins, diet, incontinence, adult
6 09:32:08 nutrition, allergy. I believe that's all of them.

7 09:32:17 Q. And as the divisional merchandise
8 09:32:25 manager, what were your general responsibilities?

9 09:32:25 A. Was responsible for the purchasing,
10 09:32:30 merchandising, and inventory management of those
11 09:32:33 categories that are my responsibility.

12 09:32:35 Q. And how long were you in that position?

13 09:32:37 A. Two years.

14 09:32:39 Q. So prior to that, what position did you
15 09:32:47 hold at Walgreens?

16 09:32:49 A. I was divisional merchandise manager for
17 09:32:54 the other division in health and wellness, OTC-2,
18 09:32:59 which includes all the categories from the initial
19 09:33:03 list minus those in OTC-1.

20 09:33:08 Q. Okay. And approximately how long were
21 09:33:10 you in that position?

22 09:33:11 A. Two years.

23 09:33:12 Q. So I make sure I have my dates roughly
24 09:33:21 correct, was that around 2005 to 2007 or is it

1 09:51:40 A. Yes.

2 09:51:41 Q. And do you have any understanding of why
3 09:51:46 McNeil is contesting the WAL-ZYR trademark?

4 09:51:49 A. Could you restate that?

5 09:51:54 Q. I will try to reask it. Do you have any
6 09:52:01 understanding of why McNeil is contesting
7 09:52:04 Walgreens' WAL-ZYR trademark?

8 09:52:04 A. No.

9 09:52:06 Q. So you don't know why McNeil would be
10 09:52:11 objecting to Walgreens' WAL-ZYR trademark?

11 09:52:14 A. No.

12 09:52:16 Q. I'd like to talk a little bit about
13 09:52:33 Walgreens' WAL-ZYR product. You mentioned before
14 09:52:33 that it is an allergy medication; is that correct?

15 09:52:36 A. Yes.

16 09:52:37 Q. Is the WAL-ZYR product sold over the
17 09:52:42 counter?

18 09:52:44 A. Yes. There are also two items that are
19 09:52:53 sold behind the counter.

20 09:52:54 Q. And what are those two items?

21 09:52:56 A. WAL-ZYR D. There are two WAL-ZYR D
22 09:53:01 SKUs.

23 09:53:01 Q. And what is the reason they are sold
24 09:53:03 behind the counter?

1 09:53:04 A. They contain pseudoephedrine.

2 09:53:10 Q. Does the WAL-ZYR product fall under your
3 09:53:15 categories of responsibility?

4 09:53:16 A. Yes.

5 09:53:17 Q. Both the version that's sold over the
6 09:53:21 counter and the versions that are sold behind the
7 09:53:24 counter?

8 09:53:25 A. Yes.

9 09:53:25 Q. Do you know what the active ingredient
10 09:53:29 is in WAL-ZYR?

11 09:53:30 A. Yes.

12 09:53:30 Q. And what is that?

13 09:53:31 A. Cetirizine.

14 09:53:35 Q. Does Walgreens sell any other
15 09:53:40 products -- sorry.

16 09:53:41 Does Walgreens sell any of its own --
17 09:53:43 any other of its own products that is Walgreen
18 09:53:47 brand products other than WAL-ZYR that contain
19 09:53:50 cetirizine?

20 09:53:53 A. Not to my knowledge.

21 09:54:00 Q. Do you know when Walgreens decided to
22 09:54:09 develop a cetirizine-based product?

23 09:54:13 A. I apologize. Could you restate the last
24 09:54:16 question?

1 09:54:17 Q. The one about when Walgreens decided to
2 09:54:20 develop the product or the one before that?

3 09:54:22 A. The one before that.

4 09:54:23 MS. POPP-ROSENBERG: Could you please reread
5 09:54:25 that?

6 09:54:26 THE WITNESS: I just want to make sure I heard
7 09:54:31 it correctly.

8 09:54:31 MS. POPP-ROSENBERG: Sure.

9 09:54:31 (WHEREUPON, the record was read
10 09:55:05 by the reporter as requested.)

11 09:55:05 THE WITNESS: Thank you. I answered it
12 09:55:06 correctly.

13 09:55:07 BY MS. POPP-ROSENBERG:

14 09:55:07 Q. Okay. So back to the question I then
15 09:55:09 asked which was do you know when Walgreens decided
16 09:55:12 to develop a cetirizine-based product?

17 09:55:16 A. Roughly one year before the product
18 09:55:28 launched.

19 09:55:29 Q. When did the product launch?

20 09:55:31 A. In January 2008.

21 09:55:34 Q. So it started developing the product
22 09:55:37 around January of 2007, is that right,
23 09:55:40 approximately?

24 09:55:41 A. That would be when discussions about the

1 09:55:49 possibility of the product would have started, I
2 09:55:49 believe.

3 09:55:49 Q. Were you involved in any of those early
4 09:55:56 discussions about the possibility of the product?

5 09:55:59 A. Yes.

6 09:56:00 Q. Who else was involved in those
7 09:56:02 discussions?

8 09:56:03 A. David Van Howe, Dan Potts. Those are
9 09:57:02 the people that I can recall.

10 09:57:03 Q. And what do you recall about those early
11 09:57:06 discussions?

12 09:57:10 MS. STEVENS: Objection. Vague.

13 09:57:10 BY THE WITNESS:

14 09:57:15 A. Could you be more specific?

15 09:57:17 BY MS. POPP-ROSENBERG:

16 09:57:17 Q. Sure. What were the substance of those
17 09:57:21 early discussions? What did you guys talk about?

18 09:57:22 A. The possibility of marketing a Walgreen
19 09:57:38 brand cetirizine.

20 09:57:43 Q. What led you to have those discussions
21 09:57:46 about the possibility of marketing a Walgreens
22 09:57:49 brand cetirizine product?

23 09:57:52 A. The interest in selling the product.

24 09:58:03 Q. Why was there an interest in selling the

1 09:59:28 early discussions in roughly January 2007, Zyrtec
2 09:59:34 was -- sorry. Let me strike that question.

3 09:59:36 At the time you were having these early
4 09:59:38 discussions in January of 2007, there was a
5 09:59:40 cetirizine-based product that was available on a
6 09:59:43 prescription basis called Zyrtec; is that right?

7 09:59:46 A. Yes.

8 09:59:48 Q. And were there any other
9 09:59:51 cetirizine-based products in the market other than
10 09:59:53 the one named Zyrtec?

11 09:59:55 A. Not that I'm aware of.

12 10:00:02 Q. Was Walgreens selling Zyrtec at the time
13 10:00:21 you had your early discussions about developing the
14 10:00:24 cetirizine based over-the-counter product?

15 10:00:28 A. We were selling the prescription version
16 10:00:37 of Zyrtec.

17 10:00:40 Q. Do you know how long Walgreens had been
18 10:00:44 selling the prescription version of Zyrtec prior to
19 10:00:47 January of 2007?

20 10:00:51 A. No, I don't.

21 10:00:51 Q. Do you believe it was longer than a
22 10:00:55 year?

23 10:00:56 A. I believe so.

24 10:01:05 Q. Do you believe it was longer than five

1 10:01:07 years?

2 10:01:08 A. I don't know.

3 10:01:08 Q. The prescription version of Zyrtec, do
4 10:01:39 you know what type of medication that is, that is,
5 10:01:42 what type of medical condition it is supposed to
6 10:01:46 treat?

7 10:01:47 A. Allergies.

8 10:01:56 Q. Are you aware whether Zyrtec is still
9 10:02:04 sold as a prescription product?

10 10:02:06 A. I'm not aware.

11 10:02:20 Q. Do you know if Zyrtec is sold as an
12 10:02:23 over-the-counter product?

13 10:02:25 A. Yes.

14 10:02:26 Q. Is Zyrtec sold as an over-the-counter
15 10:02:33 product at Walgreens?

16 10:02:34 A. Yes.

17 10:02:35 Q. And does Zyrtec fall within the
18 10:02:42 categories of your responsibility?

19 10:02:42 A. Yes.

20 10:02:42 Q. Do you know which company distributes
21 10:02:48 Zyrtec?

22 10:02:49 A. Yes.

23 10:02:50 Q. What company is that?

24 10:02:51 A. Johnson & Johnson.

1 10:20:24 TV advertising, roto advertising.

2 10:20:32 Q. What is roto advertising?

3 10:20:32 A. Roto is our Sunday circular that is

4 10:20:36 inserted with sales specials into newspapers.

5 10:20:40 Q. Does roto stand for anything?

6 10:20:43 A. I believe it's actually a reference to

7 10:20:46 the roto wheels that the newspaper runs on. It is

8 10:20:54 kind of an antiquated phrase. I believe we

9 10:20:57 discussed radio, and then we discussed other

10 10:21:05 Walgreens marketing and advertising vehicles.

11 10:21:11 Q. What type of other advertising and

12 10:21:13 marketing vehicles did you discuss?

13 10:21:17 A. In addition to the roto, we discussed

14 10:21:24 our Easy Saver catalog which was a monthly

15 10:21:25 promotional book that we put into all of our stores

16 10:21:29 with offers on various products. We discussed Mega

17 10:21:36 Savers which are monthly markdown tags that we put

18 10:21:42 on various product in the stores. I believe we

19 10:21:50 discussed Catalina.

20 10:21:54 Q. What is Catalina?

21 10:21:57 A. Catalina are offers and education that

22 10:22:03 print out with cash register receipt.

23 10:22:04 Q. And those print out at Walgreens stores

24 10:22:08 or other stores or both?

1 10:33:47 so I'm not sure.

2 10:33:48 Q. If you turn back to the first page, the

3 10:34:03 label on the top says "Zyrtec Launch ROTO Ads."

4 10:34:08 Does that mean that these were maybe mock-ups for

5 10:34:11 the Walgreen circular?

6 10:34:13 A. I believe so.

7 10:34:14 Q. And all of these mock-ups seem to carry

8 10:34:18 the statement "No. 1 Prescribed Allergy Medicine,"

9 10:34:21 do you see that? One of them has been crossed out

10 10:34:27 but --

11 10:34:27 A. Yes, I do.

12 10:34:29 Q. Do you know whether Zyrtec was the No. 1

13 10:34:31 prescribed allergy medicine before it went over the

14 10:34:36 counter?

15 10:34:36 A. I believe it was.

16 10:34:46 Q. Did the fact that Zyrtec was the No. 1

17 10:34:51 prescribed allergy medicine have any influence on

18 10:34:54 Walgreens' decision to develop its own

19 10:34:58 cetirizine-based over the counter medicine?

20 10:35:00 A. The volume of the product that was RX

21 10:35:09 did influence our decision to want to have a

22 10:35:12 Walgreen equivalent.

23 10:35:16 Q. Was there anything other than the volume

24 10:35:21 of the product that influenced Walgreens to want to

1 11:25:54 (WHEREUPON, said document was marked
2 11:25:54 Opposer's Deposition Exhibit No. 5,
3 11:26:26 for identification, as of 4/16/09.)

4 11:26:26 BY MS. POPP-ROSENBERG:

5 11:26:26 Q. If you could please look at Opposer's
6 11:26:26 Exhibit 5, let me know when you are ready.

7 11:26:51 A. Okay.

8 11:26:52 Q. Have you ever seen the document that's
9 11:26:53 been marked Opposer's Exhibit 5 before?

10 11:26:56 A. Yes.

11 11:26:57 Q. In what context have you seen the
12 11:27:00 document that's been marked Opposer's Exhibit 5?

13 11:27:03 A. In preparation for the deposition.

14 11:27:11 Q. And before that had you ever seen it?

15 11:27:11 A. I don't recall.

16 11:27:15 Q. Do you believe this is the questionnaire
17 11:27:25 for the sensory lab tests -- or at least one of the
18 11:27:29 sensory lab tests that you mentioned earlier?

19 11:27:32 A. I believe it is.

20 11:27:37 Q. Reading through the question, it appears
21 11:27:45 to me that the respondents were asked to consider
22 11:27:50 two design samples. Do you know what two design
23 11:27:57 samples they were asked to look at?

24 11:27:57 A. It doesn't actually show the design so

1 11:28:07 not based on this document.

2 11:28:09 MS. POPP-ROSENBERG: I haven't received the
3 11:28:21 designs that are used in connection with this
4 11:28:25 document, so I ask that you produce them.

5 11:28:25 MS. STEVENS: Okay. We will take that under
6 11:28:27 advisement, and we ask that you put the request in
7 11:28:30 writing.

8 11:28:30 MS. POPP-ROSENBERG: We can do that.

9 11:28:31 MS. STEVENS: Okay. And just for the record
10 11:28:37 I'm just going to ask that any requests are put in
11 11:28:37 writing.

12 11:28:37 MS. POPP-ROSENBERG: Sure.

13 11:28:37 MS. STEVENS: Okay.

14 11:28:37 MS. POPP-ROSENBERG: Can you mark this as
15 11:28:51 No. 6, Opposer's No. 6?

16 11:28:51 (WHEREUPON, said document was marked
17 11:28:51 Opposer's Deposition Exhibit No. 6,
18 11:29:55 for identification, as of 4/16/09.)

19 11:29:55 THE WITNESS: Okay.

20 11:29:57 BY MS. POPP-ROSENBERG:

21 11:29:57 Q. Have you ever seen the document that's
22 11:29:58 been marked Opposer's Exhibit 6 today?

23 11:30:01 A. Yes.

24 11:30:01 Q. In what context did you see it?

1 11:52:32 a heritage of quality in WAL group brand OTCs.

2 11:52:49 And then again it was the most

3 11:52:53 compelling from a marketing standpoint.

4 11:52:54 Q. What do you mean by marketable in
5 11:52:57 relation to a product name?

6 11:52:59 A. Consumer appeal.

7 11:53:06 Q. You mentioned that the WAL-ZYR name fell
8 11:53:31 within, I guess, the same previously used
9 11:53:33 nomenclature that Walgreens had used in connection
10 11:53:36 with some of its OTC products, specifically the WAL
11 11:53:40 portion of the WAL-ZYR mark; is that right?

12 11:53:44 A. We have different naming conventions for
13 11:53:49 Walgreen name products, one of which is the WAL
14 11:53:54 prefix.

15 11:53:54 Q. So where did Walgreens get the ZYR
16 11:53:58 portion, the Z-Y-R portion of the WAL-ZYR name?

17 11:54:04 A. Could you ask the question again?

18 11:54:42 Q. Where did Walgreens get the Z-Y-R
19 11:54:44 portion, the ZYR portion of the WAL-ZYR name?

20 11:54:50 A. From the equivalent product.

21 11:54:55 Q. That equivalent product is what?

22 11:54:57 A. Zyrtec.

23 11:54:59 Q. So the ZYR portion of the WAL-ZYR name
24 11:55:05 came from the Zyrtec product name; is that right?

1 11:55:10 A. Yes, based upon similar nomenclatures
2 11:55:19 where we have done similar branding.

3 11:55:23 Q. What do you mean by similar
4 11:55:27 nomenclatures where you have done similar branding?

5 11:55:33 A. We have other nomenclatures where we use
6 11:55:36 the WAL prefix such as WAL-SOM, WAL-ZAN to convey
7 11:55:43 the equivalency of a product.

8 11:55:48 Q. Other than an interest in conveying the
9 11:55:56 equivalency of the WAL-ZYR product to the Zyrtec
10 11:56:01 product, is there any other reason why Walgreens
11 11:56:06 selected ZYR as a portion of its WAL-ZYR name?

12 11:56:12 A. Yes, we feel that it is the most
13 11:56:16 compelling from a marketing standpoint and bridged
14 11:56:21 into our existing WAL franchise and heritage of
15 11:56:30 other products starting with the WAL prefix.

16 11:56:31 Q. Why did you believe ZYR, the ZYR portion
17 11:56:42 of the WAL-ZYR name, was the most compelling from a
18 11:56:44 marketing perspective?

19 11:56:50 A. Out of all the options we looked at, it
20 11:56:50 sounded the best.

21 11:56:51 Q. What were the other options that you
22 11:56:52 looked at?

23 11:56:53 A. As stated before, we looked at All Day
24 11:56:59 Allergy, those are the two, two options that come

1 12:30:09 like WAL-ZYR which you said borrows the ZYR portion
2 12:30:15 which you -- I'm not sure if you used the word
3 12:30:21 "borrow," but in any event, has the ZYR portion as
4 12:30:25 does the national brand equivalent Zyrtec, does
5 12:30:29 that mean that you then believe that consumers will
6 12:30:32 believe that the ZYR portion of the name conveys
7 12:30:35 that the purpose of the product is to be equivalent
8 12:30:39 to Zyrtec?

9 12:30:40 A. I'm sorry. I found that question to be
10 12:30:43 confusing. Could you ask that again?

11 12:30:47 Q. Sure. So if you have a name, for
12 12:30:48 example, like WAL-ZYR which shares with a national
13 12:30:51 brand equivalent the letters Z-Y-R, is one of the
14 12:30:56 reasons that you select the Z-Y-R portion because
15 12:30:59 you believe that Z-Y-R portion will convey to
16 12:31:02 consumers the purpose of the product?

17 12:31:06 A. That could be a part of the decision.

18 12:31:23 Q. In the case of WAL-ZYR, was that part of
19 12:31:30 the decision?

20 12:31:31 A. Yes.

21 12:31:51 Q. Why did you think that the Z-Y-R portion
22 12:31:57 of the WAL-ZYR name would convey to consumers the
23 12:32:03 purpose of the product?

24 12:32:03 A. Could you ask that again, please?

1 12:32:29 Q. Could you repeat the question?

2 12:32:29 (WHEREUPON, the record was read

3 12:32:39 by the reporter as requested.)

4 12:32:39 BY THE WITNESS:

5 12:32:48 A. In wanting to communicate a value option

6 12:32:53 for Zyrtec, we thought the name would help convey

7 12:32:56 that.

8 12:33:01 THE WITNESS: Do you mind breaking for lunch?

9 12:33:03 MS. POPP-ROSENBERG: Yes, let's go off the

10 12:33:05 record.

11 12:33:05 (WHEREUPON, discussion was had off

12 12:33:32 the record.)

13 12:33:32 MS. POPP-ROSENBERG: Could you just read the

14 12:33:33 last question and answer?

15 12:33:33 (WHEREUPON, the record was read

16 12:33:52 by the reporter as requested.)

17 12:33:52 BY MS. POPP-ROSENBERG:

18 12:33:53 Q. When you selected the WAL-ZYR name --

19 12:33:56 when Walgreens selected the WAL-ZYR name for its

20 12:34:04 cetirizine-based product, did it believe that

21 12:34:04 consumers were familiar with the Zyrtec brand name?

22 12:34:07 A. Could you define familiar?

23 12:34:09 Q. Would know the Zyrtec brand name.

24 12:34:13 A. Which consumers?

1 12:34:15 Q. Any consumers who were possibly going to
2 12:34:18 purchase the WAL-ZYR product.

3 12:34:20 A. I'm not sure I understand the question.
4 12:34:28 I'm sorry.

5 12:34:29 MS. STEVENS: I'm going to object to the form
6 12:34:30 also, the meaning of the word "know" is -- could
7 12:34:37 mean a lot of different things.

8 12:34:37 MS. POPP-ROSENBERG: Well, I originally asked
9 12:34:37 it as familiar with.

10 12:34:37 BY MS. POPP-ROSENBERG:

11 12:34:38 Q. But in any event, when Walgreens
12 12:34:41 selected the WAL-ZYR name for its cetirizine-based
13 12:34:44 product, was one of the reasons it selected the
14 12:34:47 name because it believed consumers would have
15 12:34:50 knowledge of the Zyrtec brand name?

16 12:34:55 A. It's really too broad of a question.
17 12:35:05 There are lots of consumers that have never heard
18 12:35:08 of Zyrtec and some consumers that have.

19 12:35:14 Q. So did Walgreens believe that some
20 12:35:14 consumers would have heard of the brand name
21 12:35:15 Zyrtec?

22 12:35:16 A. Yes.

23 12:35:17 Q. Does Walgreens' belief about consumers
24 12:35:31 knowledge of a national brand name factor into

1 14:39:41 Q. Why was the color green selected for the
2 14:39:45 WAL-ZYR packaging?

3 14:39:49 A. To convey national brand equivalency.

4 14:40:03 Q. And by "national brand equivalency" are
5 14:40:07 you talking about equivalency to the Zyrtec
6 14:40:12 product?

7 14:40:13 A. Yes.

8 14:40:14 Q. So the color green was chosen for the
9 14:40:17 WAL-ZYR product because the Zyrtec product also
10 14:40:20 uses the color green; is that right?

11 14:40:22 A. I believe so.

12 14:40:23 Q. Looking specifically at the WAL-ZYR name
13 14:40:51 as it appears on the packaging, is that font style
14 14:41:01 a font that is consistently used across Walgreens
15 14:41:06 WAL hyphen format name products?

16 14:41:09 A. This does reflect, this large cap, the
17 14:41:20 current style guide, but I believe we do have some
18 14:41:22 older versions of other WAL products that may still
19 14:41:25 be in our stores that have large cap as the first
20 14:41:29 letter and then small case, the old style guide.

21 14:41:33 Q. So is it Walgreens' plan to convert all
22 14:41:37 of its WAL hyphen format marks as they appear on
23 14:41:44 the product to an all caps style?

24 14:41:46 A. Yes. Several products are there

1 15:05:16 Q. But would the purchasing department ever
2 15:05:18 decide to use a WAL hyphen trademark without
3 15:05:21 consulting legal counsel or -- let me strike that
4 15:05:24 question.

5 15:05:25 In your experience has the purchasing
6 15:05:27 department ever decided to use a WAL hyphen
7 15:05:29 trademark without first consulting with legal
8 15:05:34 counsel?

9 15:05:34 A. Again, the trademark would be pursued by
10 15:05:55 the legal department, not by purchasing.

11 15:06:01 Q. Okay. But have you ever been involved
12 15:06:13 in the decision to use a WAL hyphen product, a new
13 15:06:21 WAL hyphen trademark name in connection with a
14 15:06:21 product without legal counsel being consulted?

15 15:06:27 A. You are asking me on any product?

16 15:07:25 Q. Yes, on any product.

17 15:07:31 A. So even a count extension or a flavor
18 15:07:31 extension of an existing brand?

19 15:07:33 Q. No, a new brand I'm talking about, not
20 15:07:36 an extension.

21 15:07:44 A. Not that I'm aware of.

22 15:08:03 Q. Besides the color green used on the
23 15:08:32 WAL-ZYR package, is there any other package element
24 15:08:35 that was selected in order to convey brand

1 15:08:41 equivalence to Zyrtec?

2 15:08:46 A. Yes.

3 15:09:03 Q. And what elements were selected other
4 15:09:07 than the color green to convey brand equivalence to
5 15:09:12 Zyrtec?

6 15:09:16 A. We have a Compare Zyrtec active
7 15:09:16 ingredient on the package.

8 15:09:19 Q. Anything other than that?

9 15:09:20 A. The ZYR name is used to communicate
10 15:09:58 equivalence.

11 15:10:03 I believe those are the main components.

12 15:10:07 Q. Do you believe that the -- do you know
13 15:10:15 whether the particular font style that's used for
14 15:10:16 the WAL-ZYR name was selected because of any
15 15:10:22 similarity to the appearance of the Zyrtec name as
16 15:10:27 it appears on Zyrtec materials such as the product
17 15:10:32 package?

18 15:10:33 A. No.

19 15:10:34 Q. No, you don't know or no, it was not --
20 15:10:42 no, the font was not selected because of any
21 15:10:50 similarity to the Zyrtec?

22 15:10:50 A. No, the font was not selected because of
23 15:10:50 any similarity to Zyrtec.

24 15:10:54 Q. You said that WAL-ZYR became available

1 16:27:54 A. Yes.

2 16:27:54 Q. There is a collection of WAL-ZYR named
3 16:27:57 products. If you could just -- there is 1, 2, 3,
4 16:28:03 4, 5, 6, 7, 8, 9, 10, 11 -- 12 of them. If you
5 16:28:08 could just read through that list and let me know
6 16:28:10 if you think that there are any WAL-ZYR products
7 16:28:13 types that are missing from that list.

8 16:28:16 A. I think this is everything.

9 16:29:26 Q. Do you know whether this document
10 16:29:43 represents all of Walgreens' sales of WAL-ZYR and
11 16:29:46 Zyrtec products from the period the week ending
12 16:29:51 January 15, 2008, through the week ending 18th
13 16:29:54 November 2008?

14 16:29:55 A. That looks like it was the intent of the
15 16:30:27 report. Could there be something missed on here, I
16 16:30:32 guess it's possible but this looks pretty thorough.

17 16:30:40 Q. I don't know if I asked you before or
18 16:30:41 not. I apologize if I did. But do you know who
19 16:30:44 ran this report?

20 16:30:45 A. I don't.

21 16:30:46 Q. Okay. I will let you stop looking at
22 16:30:56 financial documents for a moment.

23 16:30:57 Does Walgreens have a strategy regarding
24 16:31:02 the shelf placement of its store brand

1 16:31:05 over-the-counter products?

2 16:31:07 A. Yes.

3 16:31:11 Q. What is that strategy?

4 16:31:13 A. To be placed close to the national brand
5 16:31:18 equivalent.

6 16:31:19 Q. When you say "close," how close do you
7 16:31:23 mean?

8 16:31:24 A. Generally they will be next to or right
9 16:31:33 over or above.

10 16:31:33 Q. And why does Walgreens have that
11 16:31:33 strategy?

12 16:31:34 A. To make the shopping experience easier
13 16:31:41 for the customer and to convey the value of our
14 16:31:44 brand.

15 16:31:45 Q. How does Walgreens' shelving strategy
16 16:31:51 for its store brand over-the-counter product make
17 16:31:56 the shopping experience easier for consumers?

18 16:32:00 A. Consumers will generally look for a
19 16:32:05 certain type of product segmented by category and
20 16:32:10 symptom and potentially even ingredient.

21 16:32:21 Q. With regard to national brand products,
22 16:32:43 does Walgreens have a shelf placement strategy for
23 16:32:43 those?

24 16:32:44 A. Yes.

1 16:35:02 placement of products within a category.

2 16:35:03 Q. And this lays out the product placement
3 16:35:05 for items in a Walgreens store; is that right?

4 16:35:11 A. Yes. I can't see a date on here, so I
5 16:35:17 don't know if this is our most recent planogram but
6 16:35:18 yes, it is a layout of product on our shelves.

7 16:35:23 Q. At the top of the first page, there is a
8 16:35:24 string of numbers, 053, 00, et cetera, et cetera.
9 16:35:27 What do those numbers represent?

10 16:35:32 A. That's a code number for our Apollo
11 16:35:33 planogramming system.

12 16:35:36 Q. And then to the right of that title says
13 16:35:45 24 FT right pharmacy wall. What does that refer
14 16:35:51 to?

15 16:35:51 A. The length of the department. And many
16 16:35:54 planograms have a right facing and left facing
17 16:35:57 depending upon where the pharmacy is placed in the
18 16:35:59 store to orient the department.

19 16:36:02 Q. And do Walgreens stores have different
20 16:36:09 pharmacy shelf lengths? So, for example, this has
21 16:36:14 24 feet. Would some stores have 20 feet or 16 feet
22 16:36:18 or 12 feet?

23 16:36:19 A. There are different size planograms,
24 16:36:21 yes.

1 16:36:21 Q. So there are planograms for each of the
2 16:36:26 different size pharmacy walls?

3 16:36:30 A. Each of the different size sets, that's
4 16:36:34 right.

5 16:36:34 Q. And if you would look at the last page
6 16:36:38 of this document.

7 16:36:38 (WHEREUPON, Mr. Francis C. Kowalik
8 16:36:38 entered the deposition
9 16:36:40 proceedings.)

10 16:36:46 BY MS. POPP-ROSENBERG:

11 16:36:47 Q. On the second row, it looks like there
12 16:36:49 is a number of Zyrtec products listed and then on
13 16:36:53 the third row it looks like a number of WAL-ZYR
14 16:36:57 products listed, do you see that?

15 16:36:59 A. Yes.

16 16:37:00 Q. And so for this planogram is this
17 16:37:04 showing that the Zyrtec -- or the WAL-ZYR product
18 16:37:09 would be placed on a shelf below the Zyrtec
19 16:37:12 product?

20 16:37:13 A. Yes.

21 16:37:25 MS. POPP-ROSENBERG: If you can mark this as
22 16:37:30 Opposer's Exhibit 22, please.

23

24

1 16:42:58 Q. Are stores supposed to follow the
2 16:43:00 planogram?

3 16:43:01 A. Yes. These reflect corporate direction.

4 16:43:05 Q. Do you believe that placing the WAL-ZYR
5 16:43:17 and Zyrtec products close to each other encourages
6 16:43:22 consumers to choose the WAL-ZYR product over the
7 16:43:22 Zyrtec product?

8 16:43:23 A. It would depend on the consumer. You
9 16:43:31 have brand loyal consumers that wouldn't be
10 16:43:34 interested in Zyrtec. You have store brand --
11 16:43:38 wouldn't be interested in WAL-ZYR. You have store
12 16:43:41 brand consumers that wouldn't be interested in
13 16:43:44 Zyrtec, so it would really be relative to the
14 16:43:47 consumer.

15 16:43:48 Q. For consumers that aren't brand loyal,
16 16:43:50 do you believe that placing WAL-ZYR and Zyrtec
17 16:43:53 close to each other on the shelf encourages those
18 16:43:58 non-brand loyal consumers to choose WAL-ZYR over
19 16:44:00 Zyrtec?

20 16:44:01 A. I think it better allows them to see the
21 16:44:03 value of the Walgreen brand product versus the
22 16:44:09 national brand.

23 16:44:11 Q. Do you think placing the WAL-ZYR and
24 16:44:25 Zyrtec products on shelves close to each other

1 17:32:18 Q. Are the roto circulars the same across
2 17:32:20 the country, or do they differ by region or city or
3 17:32:28 some other distribution?

4 17:32:28 A. There can be different versions of the
5 17:32:31 roto.

6 17:32:44 MS. POPP-ROSENBERG: I'm sorry. Could you
7 17:32:45 reread his answer to how often the WAL-ZYR product
8 17:32:07 is advertised in its circulars?

9 17:32:07 (WHEREUPON, the record was read
10 17:33:03 by the reporter as requested.)

11 17:33:03 BY MS. POPP-ROSENBERG:

12 17:33:03 Q. And how often does Walgreens advertise
13 17:33:05 the Zyrtec product in its roto circulars,
14 17:33:08 approximately?

15 17:33:09 A. Approximately every other week.

16 17:33:11 Q. Does Walgreens generally advertise both
17 17:33:15 the WAL-ZYR and Zyrtec product in the same
18 17:33:19 circular?

19 17:33:20 A. There are ads that we have done that,
20 17:33:23 and there are ads where we have advertised them
21 17:33:26 separately.

22 17:33:26 Q. Do you have an idea of what percentage
23 17:33:28 the products are advertised in the same circular
24 17:33:31 and what percentage they are not advertised in the

1 17:33:37 same circular?

2 17:33:37 A. I don't.

3 17:33:37 Q. When the products are advertised in the
4 17:33:40 same circular, are they generally shown on the same
5 17:33:42 page?

6 17:33:43 A. The majority of the time, yes.

7 17:33:49 Q. Sort of on top of the WAL-ZYR product
8 17:34:03 depiction there is a circle that says "Compare to
9 17:34:06 Zyrtec," do you see that?

10 17:34:08 A. Yes.

11 17:34:08 Q. And the Compare to Zyrtec to me appears
12 17:34:14 to use -- well, the Zyrtec portion of that appears
13 17:34:17 to be in the same font style as appears on the
14 17:34:20 Zyrtec product, would you agree?

15 17:34:23 A. Yes.

16 17:34:24 Q. And on the product packaging for
17 17:34:31 WAL-ZYR, the statement is something to the effect
18 17:34:32 of "Compare to Zyrtec active ingredient"; is that
19 17:34:37 right?

20 17:34:37 A. Yes. It says "Compare to Zyrtec active
21 17:34:47 ingredient."

22 17:34:47 Q. But in the circular the compare to
23 17:34:48 language just says "Compare to Zyrtec," right?

24 17:34:51 A. Yes.

1 17:44:44 equivalency.

2 17:44:46 Q. So it is to compare that the products
3 17:44:49 have the same ingredient -- or the same active
4 17:44:53 ingredient; is that right?

5 17:44:54 A. Yes.

6 17:45:46 MS. POPP-ROSENBERG: If you can mark that as
7 17:45:47 Opposer Exhibit 26, please.

8 17:45:47 (WHEREUPON, said document was marked
9 17:45:47 Opposer's Deposition Exhibit No.
10 26, for identification, as of
11 17:46:09 4/16/09.)

12 17:46:09 BY MS. POPP-ROSENBERG:

13 17:46:09 Q. Could you look at what's been marked as
14 17:46:11 Opposer's Exhibit 26. Let me know when you are
15 17:46:13 ready.

16 17:46:14 A. Okay.

17 17:46:19 Q. Could you tell me what Opposer's
18 17:46:26 Exhibit 26 is?

19 17:46:26 A. This is a store instruction sheet for
20 17:46:33 WAL-ZYR.

21 17:46:34 Q. Okay. So this is a sheet that was sent
22 17:46:39 to the Walgreens stores?

23 17:46:41 A. Yes.

24 17:46:42 Q. If you look at the second page of the

1 17:46:50 document, could you explain to me what this page is
2 17:46:58 communicating?

3 17:46:59 A. This is communicating the receipt dates
4 17:47:06 of various WAL-ZYR products and marketing
5 17:47:11 materials.

6 17:47:11 Q. I'm looking at the first pictures under
7 17:47:21 the words "Promo Support Description" which appears
8 17:47:28 to depict some sort of display, do you see that?

9 17:47:28 A. Yes.

10 17:47:29 Q. Is that picture depicting a display?

11 17:47:32 A. Yes.

12 17:47:37 Q. Is that a display that appeared in
13 17:47:39 Walgreens stores?

14 17:47:42 A. Yes.

15 17:47:42 Q. Is that display that's depicted there,
16 17:47:49 was that something that was provided by Johnson &
17 17:48:00 Johnson?

18 17:48:00 A. There are two parts to the display.

19 17:48:06 Q. Could you explain which are the two
20 17:48:09 parts?

21 17:48:10 A. The top part of the display is the
22 17:48:18 Johnson & Johnson. The bottom part of the display
23 17:48:18 is the Perrigo display for WAL-ZYR.

24 17:48:22 Q. So did Johnson & Johnson supply the top

1 17:48:25 part of the display?

2 17:48:26 A. Yes.

3 17:48:27 Q. Is this display called a B-10 display?

4 17:48:40 A. Yes.

5 17:48:42 Q. When Zyrtec -- sorry. When J&J supplied

6 17:48:50 the B-10 display or planned to supply the B-10

7 17:48:55 display to Walgreens, did Johnson & Johnson know

8 17:49:01 that the WAL-ZYR product would be displayed under

9 17:49:03 the Johnson & Johnson portion of the display?

10 17:49:06 A. I don't know.

11 17:49:07 Q. Who would know?

12 17:49:10 A. I don't know.

13 17:49:13 Q. Is there someone who is primarily or was

14 17:49:26 primarily responsible for Zyrtec or WAL-ZYR store

15 17:49:31 displays at the time of the launch?

16 17:49:34 A. Yes.

17 17:49:36 Q. And who was that?

18 17:49:38 A. For Johnson & Johnson or for Walgreens?

19 17:49:43 Q. For Walgreens.

20 17:49:44 A. Dan Potts.

21 17:49:45 Q. If you look underneath the B-10 display,

22 17:49:54 there appears to be what looks like a balloon. Is

23 17:49:58 that a balloon?

24 17:49:58 A. Yes.

1 17:49:58 Q. According to the comment section next to
2 17:50:00 it, the instructions are to place on the B-10
3 17:50:06 display; is that correct?

4 17:50:06 A. Yes.

5 17:50:06 Q. Do you know how the balloons were placed
6 17:50:06 on the B-10 display?

7 17:50:08 A. In some stores I saw that they were tied
8 17:50:12 to the display.

9 17:50:14 Q. So they were floating above the display?
10 17:50:18 Are they helium balloons -- I'm sorry. That's a
11 17:50:20 compound question.

12 17:50:21 Are the balloons shown there helium
13 17:50:25 balloons?

14 17:50:25 A. Yes.

15 17:50:25 Q. So if they were tied to the display,
16 17:50:27 were they floating above the display?

17 17:50:30 A. Yes.

18 17:50:30 Q. And at other stores if they weren't tied
19 17:50:35 to the display, how were they placed on the B-10
20 17:50:38 display?

21 17:50:39 A. The only stores that I saw had it tied
22 17:50:47 to the display when I saw this balloon.

23 17:50:50 Q. And did Walgreens -- did J&J know that
24 17:50:55 Walgreens was intending to tie WAL-ZYR balloons to

1 17:57:56 BY MS. POPP-ROSENBERG:

2 17:57:56 Q. If you could look at what's been marked
3 17:57:58 Opposer's Exhibit 27 and Opposer's Exhibit 28.

4 17:58:11 A. Okay.

5 17:58:11 Q. Could you tell me what's been marked as
6 17:58:14 Opposer's Exhibit 27?

7 17:58:16 A. This looks like a set of pictures of
8 17:58:24 various Zyrtec displays.

9 17:58:24 Q. And do you know if any of those displays
10 17:58:26 that are pictured in Opposer's 27 were actually
11 17:58:33 used at Walgreens stores?

12 17:58:33 A. I believe they were.

13 17:58:33 Q. And do you see at least on some of them
14 17:58:38 the slogan Proven allergy relief E-Z at Walgreens?

15 17:58:43 A. Yes, I do.

16 17:58:44 Q. Then could you tell me what we are
17 17:58:50 looking at in Opposer's Exhibit 28?

18 17:58:55 A. These are the posters I was referring to
19 17:58:56 in terms of the store entrance posters.

20 17:58:58 Q. They were in connection with the Zyrtec
21 17:59:01 launch?

22 17:59:02 A. Yes.

23 17:59:02 Q. These posters have the slogan Proven
24 17:59:09 allergy relief E-Z at Walgreens, right?

1 17:59:09 A. Yes, they do.

2 17:59:11 Q. You said that that slogan, Proven
3 17:59:13 allergy relief E-Z at Walgreens, was developed
4 17:59:16 jointly by Johnson & Johnson or McNeil and
5 17:59:22 Walgreens; is that right?

6 17:59:22 A. Yes.

7 17:59:22 Q. Do you know approximately when the
8 17:59:25 companies developed that slogan?

9 17:59:27 A. I don't recall.

10 17:59:35 Q. But was it sometime before the launch of
11 17:59:38 the Zyrtec product?

12 17:59:39 A. Yes.

13 17:59:40 Q. And I note that this slogan uses E
14 17:59:57 hyphen Z instead of the word easy, E-A-S-Y; is that
15 18:00:04 right?

16 18:00:04 A. Yes.

17 18:00:04 Q. And do you know why the slogan uses E
18 18:00:08 hyphen Z instead of the word "Easy"?

19 18:00:12 A. No.

20 18:00:13 Q. Were you involved in developing this
21 18:00:17 slogan?

22 18:00:18 A. I believe the original slogan was a J&J
23 18:00:29 concept when we had asked for a unique slogan to
24 18:00:33 use at Walgreens.

1 18:00:35 Q. So do you believe that someone at
2 18:00:39 Johnson & Johnson came up with the E hyphen Z
3 18:00:45 rather than Easy language?

4 18:00:45 A. That's my recollection, yes.

5 18:00:47 Q. Do you know whether the E hyphen Z was
6 18:00:52 selected to reinforce the letter "Z" in Zyrtec?

7 18:00:57 A. Yes, I believe it was.

8 18:01:15 Q. So at least at some point whenever
9 18:01:26 Walgreens learned of this slogan, the Proven
10 18:01:30 allergy relief E-Z at Walgreens, it knew that at
11 18:01:35 least in some promotional materials that J&J would
12 18:01:38 be trying to emphasize the "Z" portion of the
13 18:01:41 Zyrtec name; is that right?

14 18:01:47 A. Yes.

15 18:01:59 MS. STEVENS: I want to ask if we can take a
16 18:02:02 break right here.

17 18:02:02 MS. POPP-ROSENBERG: Yes.

18 18:02:03 MS. STEVENS: I just want to ask, we have been
19 18:02:05 here for eight and a half hours so with the lunch
20 18:02:07 and the breaks I think we are at about seven hours.

21 18:02:10 MS. POPP-ROSENBERG: Okay.

22 18:02:11 MS. STEVENS: I was wondering if you had a
23 18:02:12 sense of how much longer you would like to take or
24 18:02:15 if you need to take today.

1 18:15:28 Zyrtec or Claritin. If it is somebody that, you
2 18:15:37 know, is not loyal to either, it could be all of
3 18:15:40 the above. It could be any product really in the
4 18:15:43 allergy section.

5 18:15:49 Q. Is Walgreens aware of anyone inquiring
6 18:15:57 as to whether the WAL-ZYR product is associated in
7 18:16:03 any way with the Zyrtec product?

8 18:16:03 A. I'm not aware of any inquiries of that
9 18:16:09 nature.

10 18:16:10 Q. Is there any other person at Walgreens
11 18:16:11 who would be aware of any inquiries of that nature
12 18:16:15 that you know of?

13 18:16:16 A. To my knowledge there hasn't been a
14 18:16:42 single report of that to the company that there has
15 18:16:45 been confusion between the two. We get copied on
16 18:16:55 customer complaints that come into the office, and
17 18:16:58 I have not seen one customer complaint on that.

18 18:17:02 Q. If a customer walked up to a store clerk
19 18:17:15 in a Walgreens store and asked if WAL-ZYR was
20 18:17:23 manufactured by the same company that manufactured
21 18:17:26 Zyrtec, does Walgreens have a policy or system for
22 18:17:31 capturing that type of question?

23 18:17:33 A. If it was a complaint of confusion, we
24 18:17:43 do have a centralized database of customer

1 18:17:49 complaints that get reported. It says right on the
2 18:17:51 package that it is not manufactured by McNeil.

3 18:18:09 Q. My question was really whether Walgreens
4 18:18:11 has a system for capturing an inquiry, not that
5 18:18:15 uses the word necessarily confusion but if a
6 18:18:18 customer just asks a Walgreens store employee
7 18:18:22 whether WAL-ZYR is manufactured by the same people
8 18:18:24 that manufacture Zyrtec.

9 18:18:29 A. Realistically across 7,000 stores and
10 18:18:36 hundreds of thousands of employees, I don't even
11 18:18:36 think that that would be a realistic system to set
12 18:18:43 up. Having said that, looking through all of the
13 18:18:45 complaints and issues that customers have had on
14 18:18:51 these products, we haven't found an instance where
15 18:18:55 there has been confusion.

16 18:18:59 If there was confusion, you would think,
17 18:19:01 you know, after all these purchases and all this
18 18:19:03 time on shelf that we would be aware of some and we
19 18:19:08 are not aware of any.

20 18:19:08 Q. But if I am hearing you correctly, there
21 18:19:10 is no system at Walgreens for capturing a customer
22 18:19:15 just asking a store clerk if WAL-ZYR is
23 18:19:19 manufactured by the same company as Zyrtec?

24 18:19:22 A. I don't believe any such system exists

1 18:19:26 in retail but no.

2 18:19:33 Q. Do you know whether some name brand --

3 18:19:35 or some companies that manufacture name brand

4 18:19:38 products also manufacture private label products

5 18:19:42 within the over-the-counter category?

6 18:19:46 A. Yes, there are national brand suppliers

7 18:19:55 that manufacture both branded and store branded

8 18:19:59 products.

9 18:19:59 Q. Can you give me some examples, just a

10 18:20:04 couple off the top of your head if you can think of

11 18:20:04 any?

12 18:20:05 A. Can I ask a quick question?

13 18:20:16 Q. Sure.

14 (WHEREUPON, discussion was had off

15 the record between the witness and

16 Ms. Stevens outside the hearing of

17 other counsel and the court

18 reporter.)

19 BY THE WITNESS:

20 18:20:38 A. I'm aware of an example in adult

21 18:20:40 nutrition drinks.

22 18:20:46 BY MS. POPP-ROSENBERG:

23 18:20:46 Q. Any other examples you can think of off

24 18:20:49 the top of your head?

1 18:20:50 A. There are examples in the vitamin
2 18:21:42 category where a national brand manufacturer
3 18:21:45 produces a national brand and store brand product.
4 18:21:52 Those are the ones that come to mind.

5 18:21:58 Q. Do consumers know that national brand
6 18:22:02 manufacturers sometimes also manufacture private
7 18:22:02 label products?

8 18:22:03 A. I don't know that. You know, I have
9 18:22:30 heard consumers state a belief that the same folks
10 18:22:35 that make private brand also make national brand in
11 18:22:41 terms of them saying that the other way around. I
12 18:22:43 personally haven't heard that.

13 18:22:47 Q. Has Walgreens ever done or commissioned
14 18:22:49 any research into whether consumers believe that
15 18:22:55 name brand companies also manufacture private label
16 18:23:02 goods or vice versa?

17 18:23:02 A. Not that I'm aware of.

18 18:23:05 Q. I'd like to show you what's been marked
19 18:23:07 Opposer's Exhibit 30.

20 18:23:09 Let me know when you are ready.

21 18:23:19 A. Okay.

22 18:23:19 Q. Do you know what Opposer's Exhibit 30
23 18:23:23 is?

24 18:23:23 A. I believe this is a list of internet end

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF L A K E)

4 I, BARBARA A. DeMICCO, C.S.R. No.
5 84-2946, a Notary Public within and for the County
6 of Lake, State of Illinois, and a Certified
7 Shorthand Reporter of said state, do hereby
8 certify:

9 That previous to the commencement of the
10 examination of the witness, the witness was duly
11 sworn to testify the whole truth concerning the
12 matters herein;

13 That the foregoing deposition transcript
14 was reported stenographically by me, was thereafter
15 reduced to typewriting under my personal direction
16 and constitutes a true record of the testimony
17 given and the proceedings had;

18 That the said deposition was taken
19 before me at the time and place specified;

20 That the reading and signing by the
21 witness of the deposition transcript was agreed
22 upon as stated herein;

23 That I am not a relative or employee or
24 attorney or counsel, nor a relative or employee of

1 such attorney or counsel for any of the parties
2 hereto, nor interested directly or indirectly in
3 the outcome of this action.

4 IN WITNESS WHEREOF, I do hereunto set my
5 hand and affix my seal of office at Chicago,
6 Illinois, this 28th day of April, 2009.

7
8
9
10 BARBARA A. DeMICCO, C.S.R. No. 84-2946
11 Notary Public, Lake County, Illinois.
12 My commission expires May 15, 2009.

I N D E X

ROBERT TOMPKINS

EXAMINATION

BY MS. POPP-ROSENBERG (AM SESSION) 3

(PM SESSION) 104

E X H I B I T S

OPPOSER DEPOSITION EXHIBIT

MARKED FOR ID

No. 1	17	5
No. 2	41	2
No. 3	44	9
No. 4	56	11
No. 5	61	2
No. 6	62	17
No. 7 WAL-ZYR 14-count package	112	17
No. 8 WAL-ZYR 30-count package	113	23
No. 9 WAL-ZYR 60-count package	114	12
No. 10 WAL-ZYR 150-count package	115	2
No. 11	121	8
No. 12	129	14
No. 13 Zyrtec 5-count package	137	13
No. 14	151	13
No. 15	162	14
No. 16	165	14

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E X H I B I T S (CONT'D)

OPPOSER DEPOSITION EXHIBIT

MARKED FOR ID

No. 17	168	7
No. 18	171	2
No. 19	173	2
No. 20	181	7
No. 21	186	8
No. 22	189	2
No. 23	203	16
No. 24	206	14
No. 25	210	22
No. 26	220	9
Nos. 27 and 28	226	23
Nos. 29 and 30	230	10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McNEIL-PPC, Inc.	)	In re Trademark Application
	)	Serial No. 76/682,070
Opposer,	)	Opposition No. 91184978
	)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

I hereby certify that I have read the foregoing transcript of my deposition given on April 16, 2009 in Deerfield, Illinois, consisting of Pages 1 to 237, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.

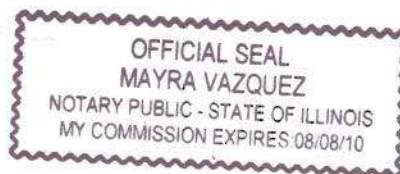


ROBERT TOMPKINS

SUBSCRIBED AND SWORN TO before me this 13th day
of July, A.D. 2009.



Notary Public



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McNEIL-PPC, Inc.	)	In re Trademark Application
	)	Serial No. 76/682,070
Opposer,	)	Opposition No. 91184978
	)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

ERRATA SHEET FOR
DEPOSITION OF ROBERT TOMPKINS
TAKEN APRIL 16, 2009

I, Robert Tompkins, do hereby certify that I have read the foregoing transcript of my testimony, taken on April 16, 2009, and have signed it subject to the following changes:

<u>Page</u>	<u>Line(s)</u>	<u>Change</u>	<u>To</u>	<u>Reason for Change</u>
7	6	fo pau	faux pas	Typographical error
226	6	easy	E-Z	Typographical error
164	10	eligible	legible	Typographical error
174	23	back	pack	Typographical error
<i>passim</i>		Cing-Mars	Cinq-Mars	Typographical error
<i>passim</i>		Sterly	Steirly	Typographical error
<i>passim</i>		DeFilipo	DeFilippo	Typographical error

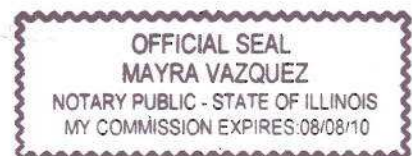
Date: 7/13/09

Signed: *RAZ*

Sworn and subscribed to before me
on this 13th day of July, 2009.

Notary Public: *Mayra Vazquez*

My commission expires 8/8/10



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McNEIL-PPC, Inc.	)	In re Trademark Application
	)	Serial No. 76/682,070
Opposer,	)	Opposition No. 91184978
	)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

CONFIDENTIALITY DESIGNATION SHEET FOR
DEPOSITION OF ROBERT TOMPKINS
TAKEN APRIL 16, 2009

The following testimony should be marked as "CONFIDENTIAL":

- Page 48, lines 13-19
- Page 54, line 22 through page 56, line 3
- Page 61, line 16 through page 62, line 1
- Page 63, line 7 through page 73, line 9
- Page 122, lines 11-16
- Page 146, line 20 through page 149, line 18
- Page 186, lines 15-18
- Page 186, line 22 through page 188, line 20
- Page 189, line 10 through page 191, line 7
- Page 203, line 24 through page 205, line 2
- Page 227, lines 9-15
- Page 230, line 20 through page 231, line 16

The following testimony should be marked as "HIGHLY CONFIDENTIAL":

- Page 56, line 22 through page 58, line 13
- Page 181, line 20 through page 184, line 20

**The following testimony should be marked as "TRADE SECRET /
COMMERCIALLY SENSITIVE":**

- Page 152, line 8 through page 162, line 5
- Page 163, line 11 through page 164, line 24
- Page 165, line 22 through page 168, line 3
- Page 168, line 15 through page 170, line 20

- Page 171, line 9 through page 172, line 22
- Page 173, line 13 through page 175, line 13
- Page 176, line 6 through page 180, line 14
- Page 206, lines 21-23
- Page 207, line 5 through page 208, line 23
- Page 224, lines 14-18

Opposer DEP. EX. NO. 26
FOR ID., AS OF 4-16-09 RD

PLEASE READ IMMEDIATELY...
IMPORTANT INFORMATION

NDC 0363-0458-13

Walgreens

Compare to Zyrtec®
active ingredient**

NEW!

WAL-ZYR™

Cetirizine Hydrochloride Tablets, 10mg / Antihistamine

ALL DAY ALLERGY

Indoor Outdoor

24 HOUR ALLERGY

Relief of:

- Runny Nose • Itchy, Watery Eyes
- Sneezing • Itchy Throat or Nose
- Relieves Itching due to Hives

Actual Size 

Compare to Zyrtec®
active ingredient

**Don't Miss This
Huge Opportunity!**






**Cetirizine is the
#1 Prescribed
Antihistamine**

Coming to *Walgreens* January 15, 2008
Without a Prescription

READ THIS

IMPORTANT INFORMATION on *Walgreens* Cetirizine

Coming to *Walgreens* January 15, 2008
Without a Prescription

ITEM DESCRIPTION & IMAGE	WIC#	COMMENTS
CETIRIZINE 10mg 14 CT. 	542429	ALL STORES WILL RECEIVE 1 CASE ON 1/15 VIA CARDINAL TO SUPPORT THE 1/20 AD. THE SECOND DISTRIBUTION IS COMING VIA THE DC'S STARTING 1/17.
CETIRIZINE 10mg 30 CT. 	547952	ALL STORES WILL RECEIVE 1 CASE ON 1/30 VIA CARDINAL TO SUPPORT THE 2/3 AD. THE SECOND DISTRIBUTION IS COMING VIA THE DC'S ON 2/1 TO SUPPORT THE 2/10 AD.
PROMO SUPPORT DESCRIPTION 	538845	ALL STORES WILL RECEIVE ON 2/14 VIA CARDINAL.
WAL-ZYR® BALLOON 		SHIPPING 2/14 VIA U.S MAIL. PLACE ON THE B-10 DISPLAY.
PHARMACY INFORMATION SHEET 		PHARMACIST REFERENCE SHEET. (ENCLOSED) PLEASE PLACE BEHIND PHARMACY COUNTER

ZYRTEC® Launch Store Entrance Poster

NEW! Original Prescription Strength

ZYRTEC

Cetirizine HCl **ALLERGY**

24 Indoor & Outdoor
hour Relief of
Sneezing • Itchy, Watery Eyes
Runny Nose • Itchy Throat or Nose

Get it NOW
Without a Prescription

Proven allergy relief. E-Z at *Walgreens*

Use only as directed.

NEW! **#1** Prescribed Allergy Medicine*

ZYRTEC

Cetirizine HCl **ALLERGY**

24 hour Relief of
Sneezing • Runny Nose • Itchy, Watery Eyes
Itchy Throat or Nose

Indoor & Outdoor Allergies

Get it NOW
Without a Prescription

Proven allergy relief. E-Z at *Walgreens*

Use only as directed.

*See Walgreens.com 2006-2007 © Walgreens Inc.

Oppen DEP. EX. NO. 28
FOR ID., AS OF 4-16-09

* possible: if I prescribed allergy medication.

NEW!

Original Prescription Strength

ZYRTEC

Cetirizine HCl

ALLERGY

24 Indoor &
hour Outdoor

Relief of

- Sneezing
- Itchy, Watery Eyes
- Runny Nose
- Itchy Throat or Nose

Get it NOW
Without a Prescription

Proven allergy relief. **E-Z** at *Walgreens*

Use only as directed.

© 1994 Zyrtec, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**EXHIBIT 108
TO
OPPOSER'S NOTICE OF RELIANCE
ON APPLICANT'S DEPOSITION TESTIMONY
(REDACTED FOR CONFIDENTIALITY)**

1
2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
4

5 McNEIL-PPC, INC.,)
6 Plaintiff,)
7 -vs-) Opposition No.
8 WALGREEN CO.,) 91184978
9 Defendant.)
10

11 C O N F I D E N T I A L
12

13 The deposition of DAN POTTS, called by the
14 Opposer for examination, taken pursuant to the
15 Federal Rules of Civil Procedure of the United
16 States Patent and Trademark Office pertaining to
17 the taking of depositions, taken before BARBARA A.
18 DeMICCO, C.S.R. No. 84-2946, a Notary Public within
19 and for the County of Lake, State of Illinois, and
20 a Certified Shorthand Reporter of said state, at
21 Building 104, Second Floor, Walgreens, 104 Wilmot
22 Road, Deerfield, Illinois, on the 1st day of May,
23 A.D. 2009, commencing at 8:54 a.m.
24

1 PRESENT:

2 FROSS ZELNICK LEHRMAN & ZISSU PC,

3 (866 United Nations Plaza,

4 New York, New York 10017,

5 212-813-5900), by:

6 MS. LAURA POPP-ROSENBERG,

7 appeared on behalf of the Opposer;

8 LEYDIG, VOIT & MAYER, LTD.,

9 (Two Prudential Plaza, Suite 4900,

10 Chicago, Illinois 60601-6731,

11 312-616-5600), by:

12 MS. CAROLINE L. STEVENS,

13 -and-

14 WALGREEN CO.,

15 (104 Wilmot Road, MS No. 1425,

16 Deerfield, Illinois 60015,

17 847-315-4640), by:

18 MR. FRANCIS C. KOWALIK,

19 appeared on behalf of the Applicant.

20
21 REPORTED BY: BARBARA A. DeMICCO,

22 C.S.R. No. 84-2946.

23

24

1 Q. Do you know what the issue was with the
2 prepaid cell phone cards in the proceeding?

3 A. I do not.

4 Q. Okay. Is there any reason today that
5 you can't testify truthfully and to the best of
6 your ability?

7 A. No.

8 Q. First I'd like to just discuss your
9 education.

10 Did you attend college?

11 A. I did.

12 Q. Where did you go?

13 A. UW-Whitewater.

14 Q. University of Wisconsin?

15 A. In Wisconsin, yes.

16 Q. What did you major in at that college?

17 A. Business, personnel.

18 Q. When did you graduate?

19 A. 1983.

20 Q. Did you take any post-graduate courses?

21 A. No.

22 Q. Are you currently employed?

23 A. No.

24 Q. Have you ever been employed?

1 A. Yes.

2 Q. Who was your last employer?

3 A. Walgreens.

4 Q. When did you leave Walgreens?

5 A. April 20 -- no. March 26th, 2009.

6 Q. What position was your last position at
7 Walgreens?

8 A. Category manager.

9 Q. Was there any particular category that
10 you were in charge of as category manager?

11 A. Pain/sleep and incontinence.

12 Q. Why did you leave Walgreens?

13 A. Short story is I was tired of 60-hour
14 and 70-hour work weeks.

15 Q. Okay. That's fair. How long did you --
16 how long were you employed by Walgreens before you
17 left?

18 A. Almost 26 years.

19 Q. Were you a category manager in the
20 pain/sleep and incontinence category for that
21 entire time?

22 A. No.

23 Q. How long were you the category manager
24 for pain/sleep and incontinence?

1 A. Since September 2008.

2 Q. And prior to that position what position
3 did you hold at Walgreens?

4 A. I was category manager for cough/cold
5 and allergy.

6 Q. What were the dates that you held that
7 position?

8 A. January 2007 through September 2008.

9 Q. Okay. Prior to being category manager
10 for the cough/cold/allergy category, what position
11 did you hold at Walgreens?

12 A. Category manager for electronics and
13 prepaid cell phone cards and gift cards.

14 Q. During what time period did you hold
15 that position?

16 A. Oh, gosh. I will say May of 2006 until
17 January of 2007, I believe.

18 Q. So we are not getting far back in your
19 career at Walgreens here.

20 Prior to your position as category
21 manager for the electronics and prepaid cards
22 category, did you have other category manager
23 positions?

24 A. I did.

1 A. Correct.

2 Q. What can you tell me about the WAL-ZYR
3 product?

4 A. As in ingredients, packaging?

5 Q. Whatever you would like to tell me about
6 it. If someone said, "What is WAL-ZYR," what would
7 you say to them?

8 A. WAL-ZYR is a private brand equivalent of
9 Zyrtec with the main ingredient cetirizine.

10 Q. Is there a particular -- well, strike
11 that. Let me go back.

12 Is WAL-ZYR an over-the-counter medicine?

13 A. Correct.

14 Q. And is it supposed to treat a particular
15 ailment?

16 A. Allergy symptoms.

17 Q. Do you know when WAL-ZYR -- when
18 Walgreens started selling the WAL-ZYR product?

19 A. In January of 2008.

20 Q. At that time you were the category
21 manager for the cough/cold/allergy category; is
22 that correct?

23 A. I was.

24 Q. Were you involved in the development of

1 Q. What does GMM stand for?

2 A. General merchandise manager.

3 Q. So Chong Bang replaced Dave Van Howe?

4 A. Correct.

5 Q. In that position?

6 Okay. Besides Robert Tompkins who you
7 said was involved more regularly and then also
8 Chong Bang and Dave Van Howe who you said were
9 involved less regularly but intermittently, were
10 there any other individuals who you recall being
11 involved in the development of the Walgreens
12 private label cetirizine-based product?

13 A. No.

14 Q. You said that WAL-ZYR is a private label
15 version -- I'm not sure if those were your exact
16 words -- of Zyrtec; is that correct?

17 A. WAL-ZYR would be the private brand
18 equivalent of Zyrtec.

19 Q. And what is Zyrtec?

20 A. Zyrtec is an over-the-counter allergy
21 cetirizine as the main ingredient.

22 Q. So WAL-ZYR and Zyrtec share the same
23 active ingredient cetirizine; is that correct?

24 A. Correct.

1 Q. Do you know when Zyrtec became an
2 over-the-counter medicine, when it was first sold
3 over the counter?

4 A. When it first hit retail stores?

5 Q. Yes.

6 A. And through the register? January
7 of 2008.

8 Q. Do you know if it was before or after
9 WAL-ZYR first hit retail sales?

10 A. Meaning which one actually went through
11 the register first?

12 Q. Yes.

13 A. I believe WAL-ZYR actually went through
14 our cash register first.

15 Q. When Walgreens was developing its plans
16 to distribute a cetirizine-based private label
17 product, did you know that Zyrtec planned to be an
18 over-the-counter medicine?

19 A. Yes.

20 Q. Do you recall when Walgreens chose the
21 name WAL-ZYR for its cetirizine-based private label
22 product?

23 A. I do not know -- I do not recall
24 exactly.

1 Q. Do you have an idea of approximately
2 when that would have been?

3 A. Fall or winter of 2007.

4 Q. Were you involved in the selection of
5 the name of WAL-ZYR?

6 A. I was.

7 Q. Was there anyone else involved?

8 A. The same gentleman mentioned before,
9 Robert Tompkins, and to a lesser degree Chong and
10 Dave Van Howe.

11 Q. Do you remember who came up with the
12 name WAL-ZYR initially?

13 A. Initially I don't.

14 Q. Did you come up with the name initially?

15 A. Did I?

16 Q. Yes.

17 A. I'm sure it was on a list of names that
18 I had. I don't recall if I was the one that first
19 coined it.

20 Q. What other names were on the list of
21 names that you mentioned?

22 A. There is two other names I can remember
23 and that was -- besides WAL-ZYR, WAL-TEC, and I
24 think it was All Day Allergy.

1 Q. As far as you remember, who generated
2 this list of potential names for the cetirizine
3 product?

4 A. I believe that would have originated
5 with me.

6 Q. I'm sorry. With whom?

7 A. It would have originated with me.

8 Q. Other than WAL-ZYR, WAL-TEC, and All Day
9 Allergy, do you recall any other names that
10 Walgreens considered even fleetingly in connection
11 with the cetirizine-based product?

12 A. I don't.

13 Q. What was the decision process for --
14 what was the process for generating possible names
15 for the cetirizine-based private label product?

16 A. Just coming up with names or -- I'm not
17 sure what --

18 Q. As far as you remember -- let me go back
19 a minute -- I guess not a minute but let me go back
20 in time.

21 At some point Walgreens decided that it
22 was interested in potentially selling, I guess, a
23 cetirizine-based over-the-counter product?

24 A. Correct.

1 Q. So was the name selected or were the
2 names -- did the company come up with potential
3 names, or did the company come up with the idea for
4 the product first?

5 A. Product first.

6 Q. So at what point, I guess, in the
7 development of the product were potential names
8 developed for the product?

9 A. Typically you probably kick around names
10 as soon as you realize you are going to have a
11 product. When it was officially started to go into
12 full production, I don't remember.

13 Q. At some point, I guess, someone came up
14 with this list that you mentioned of three
15 potential names for the product. What was the
16 decision-making process for deciding which of those
17 three names would eventually be attached to the
18 product?

19 A. We actually put them in our sensory lab,
20 and we just had folks ad hoc walk in and see what
21 they thought of the names.

22 Q. Could you tell me a little bit about the
23 sensory lab?

24 A. It is just a -- I'll call it a product

1 development room where we ask people to come in and
2 just give us their evaluation of either product or
3 names or packaging.

4 Q. And is that a -- is the sensory lab in
5 the Walgreens campus here?

6 A. Yes, it is.

7 Q. And so you mentioned that people come in
8 on an ad hoc basis and answer questions or give
9 opinions. The people that come in, who are those
10 people?

11 A. Those are Walgreen employees.

12 Q. Are those Walgreen employees generally
13 people working, I guess, in corporate Walgreens or
14 are those people who are more working in the
15 Walgreens stores, retail stores?

16 A. Mostly corporate.

17 Q. Are particular individuals invited into
18 the sensory lab, or can anyone just stop in
19 whenever they want?

20 A. Both really. It is open to anyone at
21 Walgreens.

22 MS. POPP-ROSENBERG: Can you mark this as
23 Opposer's Exhibit 33, please?

24 (WHEREUPON, said document was marked

1 labeled 579 and 233.

2 A. Correct.

3 Q. Do you believe that the artwork shown in
4 Exhibit 33 is what was shown to respondents in
5 connection with the questionnaire that's marked
6 Opposer's Exhibit 5?

7 A. I have to make an assumption that it is.

8 Q. So when you were mentioning earlier that
9 you tested the names you were considering for the
10 cetirizine-based product in the sensory lab, would
11 this questionnaire in Exhibit 5 be what you were
12 talking about?

13 A. Again, I will assume so. The sensory
14 lab does their own work.

15 Q. Who makes the decision to test things --
16 in connection with the cetirizine-based product
17 specifically, who made the decision to test names
18 in the sensory lab?

19 A. That would have come from myself or
20 Robert.

21 Q. How does the process work? You or
22 Robert decided you wanted to test the potential
23 names for the product with -- in the sensory lab.
24 What do you do next?

1 Q. Anything else at all, input from you
2 based on your familiarity with the OTC market,
3 anything at all.

4 A. Really, no. It would have been just the
5 sensory lab and discussion between Robert and
6 myself and maybe Chong and Dave.

7 Q. And in those discussions between you and
8 your colleagues, in selecting the name do you
9 remember the type of things that were discussed?

10 A. Certainly we took the sensory lab into
11 account and then did it seem to make sense for the
12 product.

13 Q. And in terms of the question of whether
14 the name made sense for the product, what types of
15 things were you talking about?

16 A. Would customers understand what the
17 ingredient was and what the national brand would
18 be.

19 Q. And did you believe that the name
20 WAL-ZYR would tell consumers what the ingredient
21 was?

22 A. We believed that people would understand
23 that it was the private brand comparison to Zyrtec.

24 Q. Why would people understand that based

1 on the name WAL-ZYR?

2 A. Because of our legacy. In
3 over-the-counter drugs we use the WAL prefix for a
4 lot of over-the-counter private brand equivalents.

5 Q. So what in particular about the WAL-ZYR
6 name would lead consumers to understand that it is
7 the private label equivalent to Zyrtec?

8 A. People have become accustomed to the
9 WAL, I'll call it a prefix followed by something
10 that connects with the name brand name.

11 Q. And the name WAL-ZYR, does the Z-Y-R
12 portion connect to the brand name Zyrtec?

13 A. It would.

14 Q. And how does it do that?

15 A. The Z-Y-R is spelled the same as the
16 Z-Y-R in Zyrtec.

17 Q. So was the WAL-ZYR name considered as a
18 potential name for the product because of the
19 connection to the national brand Zyrtec?

20 A. It was considered that people would
21 understand, yes, what that was.

22 (WHEREUPON, Mr. Francis C. Kowalik
23 entered the deposition
24 proceedings.)

1 BY MS. POPP-ROSENBERG:

2 Q. Why did Walgreens choose the name
3 WAL-ZYR over the name WAL-TEC which it also
4 considered for the same product?

5 A. We felt it was more easy for a customer
6 to understand that it was the equivalent to Zyrtec.

7 Q. Why did you think it would be easier for
8 customers to understand that?

9 A. It made more sense to us.

10 Q. In what aspect did it make more sense?

11 A. I think people would have connected the
12 ZYR more than the TEC.

13 Q. Is that because the ZYR is the first
14 part of the Zyrtec name rather than the last part?

15 A. I don't believe it had anything to do
16 with that.

17 Q. Why did you think that consumers would
18 make the relationship better between WAL-ZYR versus
19 WAL-TEC?

20 A. Gut feel.

21 Q. Was that gut feel based on anything?

22 A. No. We just liked -- we thought WAL-ZYR
23 sounded better than WAL-TEC.

24 Q. What were -- I understand WAL-TEC and

1 WAL-ZYR both have some connection to the national
2 brand Zyrtec. What were the reasons that Walgreens
3 was considering the All Day Allergy name for the
4 cetirizine-based product?

5 A. Honestly, it was we were trying to come
6 up with a name that people would understand. So
7 when we first kicked around the name WAL-ZYR or
8 WAL-TEC as traditionally we do, we weren't sure
9 that that would convey the message. So we thought
10 we would think of some other names, so that's where
11 All Day Allergy came from.

12 Q. What message do you think that All Day
13 Allergy gives to customers that the names WAL-ZYR
14 or WAL-TEC don't give?

15 A. It just wasn't strong enough to indicate
16 it was cetirizine based and potentially the
17 equivalent of Zyrtec.

18 Q. Who was the ultimate decision-maker for
19 selecting the WAL-ZYR name for the product, who had
20 the final approval over it?

21 A. I believe that would have started with
22 me and then that would have gone all the way up to
23 probably Dave Van Howe.

24 Q. When the company decided to name the

1 cetirizine-based product WAL-ZYR, did it believe
2 that consumers were familiar with the brand name
3 Zyrtec?

4 A. I'm not sure of that.

5 Q. So if consumers weren't familiar with
6 the brand name Zyrtec, why would Walgreens use the
7 name WAL-ZYR?

8 A. If you mean allergy sufferers or
9 Walgreen customers in general?

10 Q. Either one. Let's say allergy
11 sufferers. Did Walgreens believe that allergy
12 sufferers were familiar with the brand name Zyrtec
13 when it --

14 MS. STEVENS: Object to form.

15 BY MS. POPP-ROSENBERG:

16 Q. -- when it decided to name its product
17 WAL-ZYR?

18 A. Personally speaking, if you are an
19 allergy sufferer, you probably have heard of
20 Zyrtec. So WAL-ZYR we believe people would have
21 made that connection and understood the difference.

22 Q. Among allergy sufferers then do you
23 think that Zyrtec was a pretty well known name?

24 A. I don't know.

1 Q. Do you recall having any specific
2 discussions with any of your colleagues about
3 whether WAL-ZYR or WAL-TEC better conveyed a
4 connection to the national brand product Zyrtec?

5 A. Colleagues meaning Robert and Chong and
6 Dave or other Walgreens folks?

7 Q. Anyone.

8 A. Could I have had conversations?
9 Potentially. Sometimes we kick stuff around
10 between buyers, but I don't recall.

11 Q. Do you recall having discussions with
12 Robert Tompkins or Chong Bang or any of the people
13 who were involved in the selection or Dave Van
14 Howe, people who were involved in the name
15 selection, about which name, WAL-ZYR or WAL-TEC,
16 better conveyed a connection to Zyrtec?

17 A. Specific conversations, no. But I know
18 we did talk about name.

19 Q. I understand that you don't remember
20 specific conversations. But what is your general
21 recollection of those discussions? What types of
22 things were discussed?

23 A. Really two things. What would resonate
24 with the customer and what would be the least

1 confusing so that people would know immediately
2 what the product was.

3 Q. And when you say resonate with a
4 customer, what do you mean by that?

5 A. That they would understand what the
6 product was, the private brand equivalent.

7 Q. So you felt that WAL-ZYR would better
8 resonate with consumers than WAL-TEC in terms of
9 having them understand what the national brand was?

10 A. We did.

11 Q. Does Walgreens sell other private label
12 brand allergy products over the counter other than
13 WAL-ZYR?

14 A. We do.

15 Q. Can you name those products?

16 A. The national brand or the private brand?

17 Q. Walgreens brand.

18 A. Walgreens brand. Off the top of my
19 head, there's WAL-VERT, WAL-ITIN, WAL-DRYL. That's
20 all I can recall right now.

21 Q. Do any of Walgreens private label brand
22 over-the-counter allergy medicines have a name
23 that's not in the WAL prefix format?

24 A. Meaning that it start with the WAL,

1 correct?

2 Q. Yes.

3 A. Not to my recollection.

4 Q. As far as you know, has Walgreens ever
5 sold a product called All Day Allergy?

6 A. No, not that I'm aware of.

7 Q. I know that you mentioned the three
8 names you recall being considered in connection
9 with the cetirizine-based product were WAL-ZYR,
10 WAL-TEC, and All Day Allergy.

11 A. Correct.

12 Q. You don't recall any others; is that
13 correct?

14 A. That would be correct.

15 Q. And do you know whether Walgreens ever
16 considered a WAL prefix format name that derived
17 from the active ingredient cetirizine such as
18 WAL-ZINE or WAL-IZINE?

19 A. No. We couldn't make it work.

20 Q. Why don't you think you could make that
21 work?

22 A. It didn't make sense.

23 Q. Why didn't it make sense?

24 A. It was too hard to convey the message.

1 A. I could not pinpoint it, no.

2 Q. Do you have a rough idea of when it may
3 have been?

4 A. Again, August, September-ish of 2007.

5 Q. Do you know whether the WAL-ZYR name had
6 been finalized as the name for the product when the
7 package design process started?

8 A. I don't know.

9 Q. When the WAL-ZYR name was finally
10 selected as the name for the product, was there any
11 written document commemorating that decision?

12 A. Written document from who?

13 Q. From anyone. I think you mentioned
14 earlier that Dave Van Howe kind of had the final
15 signoff on the name.

16 A. No, not that I recall.

17 Q. I'd like you to look at what's
18 previously been marked Opposer's Exhibit 7.

19 MS. POPP-ROSENBERG: If we could go off the
20 record for a second.

21 (WHEREUPON, discussion was had off
22 the record.)

23 BY MS. POPP-ROSENBERG:

24 Q. Let me know when you are ready.

1 A. Okay.

2 Q. Could you tell me what Opposer's
3 Exhibit 7 is?

4 A. This is a package of WAL-ZYR.

5 Q. Is there any particular product count
6 for Opposer's 7?

7 A. This is 14. This is a 14-count.

8 Q. Was the 14-count WAL-ZYR product -- did
9 that product exist at the launch of WAL-ZYR?

10 A. I believe so, yes.

11 Q. And do you recall whether the packaging
12 that's shown in Exhibit 7 is the same packaging
13 that was used when WAL-ZYR first was launched?

14 A. I don't. I'd like to clarify that. I
15 don't know if this is the current packaging or not
16 or if they have changed anything.

17 Q. Do you recall whether packaging for the
18 WAL-ZYR product was changed after the launch?

19 A. To my knowledge, no.

20 Q. Could I just have Opposer's Exhibit 7
21 back?

22 If you could look at the top right-hand
23 corner, there is a legend there that reads "Compare
24 to Zyrtec active ingredient," do you see that?

1 A. I do.

2 Q. Why does that legend appear on the
3 product?

4 A. Because it has cetirizine in it which is
5 what Zyrtec has.

6 Q. Does the package also say on the front
7 of it that it has cetirizine in it?

8 A. It does.

9 Q. So what additional information is
10 communicated by the Compare to Zyrtec active
11 ingredient legend?

12 A. I'm sorry. I'm not understanding the
13 question.

14 Q. Well, you said that the reason -- I
15 think you said -- and I'm not going to have your
16 exact words -- is the reason why the Compare to
17 active ingredient legend is on there was to
18 communicate that it had cetirizine in it which
19 Zyrtec also has, but you also said that the product
20 states on the front of the box that you see there
21 that it has cetirizine in it. So in my mind it is
22 somewhat duplicative to say that this product has
23 cetirizine and then also to say "Compare to Zyrtec
24 active ingredient." So I'm trying to figure out

1 what message is being communicated by the Compare
2 to Zyrtec active ingredient legend that's not
3 already communicated by the fact that -- the
4 inclusion of the word "cetirizine"?

5 A. We want to make sure that customers are
6 comfortable with the fact that if -- this is the
7 same quality product as Zyrtec would be.

8 Q. And why do you want customers to be
9 comfortable with that?

10 A. Because Zyrtec is a national brand.

11 Q. Do you believe that customers are
12 comfortable with the Zyrtec national brand product?

13 A. I don't know that.

14 Q. Do you think consumers are more familiar
15 with the national brand name Zyrtec than they are
16 familiar with the active ingredient name
17 cetirizine?

18 A. I'm not sure.

19 Q. Would you agree that in the Compare to
20 Zyrtec active ingredient legend that the Compare to
21 Zyrtec portion is in a bolder or heavier font than
22 the active ingredient portion?

23 A. Yes.

24 Q. And why is that?

1 A. I don't know.

2 Q. Do you know of any other allergy
3 medicines that use green?

4 A. I believe Chlor-Trimeton does. That's
5 the only one I can think of.

6 Q. And what about Zyrtec?

7 A. Zyrtec would have green.

8 Q. Did you know that Zyrtec used green in
9 connection with its product before you selected
10 green for the WAL-ZYR product?

11 A. I believe we did have the understanding
12 that Zyrtec would be green.

13 Q. Did you ever consider any other colors
14 for the WAL-ZYR product besides green?

15 A. Not that I'm aware of.

16 MS. POPP-ROSENBERG: If you can mark this as
17 37, please.

18 (WHEREUPON, said document was marked
19 Opposer's Deposition Exhibit No.
20 37, for identification, as of
21 5/1/09.)

22 BY MS. POPP-ROSENBERG:

23 Q. If you could please look at what's been
24 marked Opposer's Exhibit 37. Let me know when you

1 MS. POPP-ROSENBERG: I'd like to mark this
2 document as 39.

3 (WHEREUPON, said document was marked
4 Opposer's Deposition Exhibit No.
5 39, for identification, as of
6 5/1/09.)

7 BY MS. POPP-ROSENBERG:

8 Q. If you could please look at what's
9 marked Opposer's Exhibit 39 and let me know when
10 you are ready.

11 A. Okay.

12 Q. Have you ever seen the document that's
13 been marked Opposer's Exhibit 39 before?

14 A. I have not.

15 Q. Have you ever seen a document like the
16 one that's been marked Opposer's Exhibit 39 before?

17 A. To my knowledge, no.

18 Q. Sorry. I don't recall what you said. I
19 apologize. I'm going to ask the question again.

20 Turning your attention back to Opposer's
21 Exhibit 37, did you say you had seen those
22 particular product designs before today?

23 A. I believe I had, yes.

24 Q. And you said that you had an

1 who would have told the art department to use
2 green?

3 A. Yes.

4 Q. That wasn't something the art department
5 came up with by themselves; is that right?

6 A. Not that I'm aware of.

7 Q. Do you recall any discussions with
8 anyone at Walgreens whether it is with the art
9 department or Mr. Tompkins or anyone at all about
10 trying to make the WAL-ZYR package look similar to
11 the Zyrtec package?

12 A. No.

13 Q. Do you recall any discussions with
14 anyone at all again about trying to make the
15 WAL-ZYR package have design elements that were
16 similar to what you believed the Zyrtec
17 over-the-counter product would look like?

18 A. What we thought the package would look
19 like?

20 Q. Yes.

21 A. Were there conversations? Yes.

22 Q. And what were those conversations?

23 A. We didn't know what the package would
24 look like, so we were just wondering what the

1 understanding that the Zyrtec over-the-counter
2 product would have a green color at the time you
3 were thinking about the color for the WAL-ZYR
4 package; is that right?

5 A. Yes.

6 Q. Was one of the reasons that you selected
7 the green color for the WAL-ZYR package because you
8 believed that Zyrtec over-the-counter product would
9 have green?

10 A. Correct.

11 Q. Did you think that consumers would more
12 likely make an association between the WAL-ZYR
13 product and the Zyrtec product based on the color
14 green being used for both?

15 A. The color green would have been based on
16 that there would have been a comfort level that,
17 yes, this was the same quality product as Zyrtec
18 was.

19 Q. I'm going to show you what's previously
20 been marked Opposer's Exhibit 13.

21 Let me know when you are ready.

22 A. Okay.

23 Q. Have you ever seen a product like the
24 one that's been marked Opposer's Exhibit 13 before?

1 package looked like.

2 Q. But you knew what the -- you had an idea
3 of what the color scheme was; is that correct?

4 A. Just that green would be used somehow in
5 the package.

6 Q. And so did you have discussions about --
7 specific discussions about wanting the WAL-ZYR
8 package to have green because you believed the
9 Zyrtec package would likely have green?

10 A. Did we have discussions about the
11 WAL-ZYR package being green because Zyrtec was,
12 yes.

13 Q. And who were those discussions with that
14 you remember?

15 A. It would have been the art department.

16 Q. The art department. And also -- so
17 would those discussions have also involved
18 Mr. Tompkins?

19 A. Potentially. I don't know who was in
20 those meetings.

21 Q. Do you recall anyone else besides
22 members of the art department and Mr. Tompkins who
23 would have been involved in those discussions?

24 A. I do not.

1 Q. When did you start communicating with
2 McNeil about the launch of the Zyrtec
3 over-the-counter product?

4 A. When did I personally start?

5 Q. Yes. Personally.

6 A. It would have been in January of 2007.

7 Q. So immediately upon you entering your
8 position as category manager for the
9 cough/cold/allergy category?

10 A. Correct.

11 Q. Was Walgreens, not you personally but
12 anyone from Walgreens, communicating with McNeil
13 personnel about the launch of the Zyrtec
14 over-the-counter product before January of 2007 as
15 far as you know?

16 A. I don't know. I believe there was some
17 communication.

18 Q. How often were you communicating with
19 people at McNeil regarding the launch of the Zyrtec
20 product beginning in January 2007?

21 A. What type of communication?

22 Q. No. How often?

23 A. Oh, how often.

24 Q. Yes. Any type of communications,

1 e-mail, telephone, faxes, letters.

2 A. It could have been every day.

3 Q. So it was pretty frequent?

4 A. Yes.

5 Q. Did that level of interaction -- was
6 that level of interaction consistent from January
7 2007 through the launch of Zyrtec over-the-counter
8 in January of 2008?

9 A. Yes.

10 Q. And then afterwards?

11 A. Yes.

12 Q. What type of things were you
13 corresponding about in the early part, say, of
14 January 2000- through March 2007 time frame?

15 A. Just how we wanted to go about launching
16 it.

17 Q. So was it that McNeil had a particular
18 launch plan that it was communicating to Walgreens
19 or was it more of a collaborative effort between
20 the two entities developing the right launch plan?

21 A. It was more collaborative.

22 Q. And was that launch plan specific to
23 Walgreens, or was that a national launch plan for
24 Zyrtec generally?

1 A. She worked in the advertising media
2 department.

3 Q. What did she do in the advertising media
4 department?

5 A. In this particular case for Zyrtec, she
6 helped coordinate any TV commercials, radio.

7 Q. Was she also involved in developing the
8 launch strategy, or was it a more -- let me stop
9 the question there.

10 Was she involved in developing the
11 launch strategy?

12 A. Launch strategy --

13 Q. In general terms rather than particular
14 components of it.

15 A. No.

16 Q. Was Mr. Tompkins involved in discussions
17 with McNeil personnel about the WAL-ZYR launch --
18 sorry -- Zyrtec launch?

19 A. Yes.

20 Q. What about Chong Bang?

21 A. Really not so much.

22 Q. Would you say that Walgreens and McNeil
23 worked closely together on the launch of the Zyrtec
24 product over-the-counter?

1 A. Yes.

2 Q. Did you ever have in-person meetings
3 with members of McNeil to discuss the Zyrtec
4 over-the-counter launch?

5 A. Yes.

6 Q. How often did you have in-person
7 meetings?

8 A. Every two weeks.

9 Q. Every two weeks?

10 A. Yes.

11 Q. Who were you generally meeting with in
12 those meetings?

13 A. Brian Gugel.

14 Q. What were discussed in those
15 face-to-face meetings?

16 A. The same topics before, launch,
17 inventory, advertising. Really that's pretty much
18 it. Anything and everything would have been in
19 those meetings.

20 Q. When do you recall first seeing any
21 marketing materials for the over-the-counter launch
22 of Zyrtec?

23 A. Marketing materials meaning --

24 Q. Any consumer facing marketing materials

1 Q. Were there any other competitors that
2 you looked at their cetirizine-based products?

3 A. Yes.

4 Q. And which competitors were those?

5 A. Walmart, Target, grocery stores. I
6 don't remember which in particular.

7 Q. And why did you look at those?

8 A. Curiosity.

9 Q. Did you discuss competitors'
10 cetirizine-based products with other people at
11 Walgreens?

12 A. Probably Robert Tompkins.

13 Q. And do you remember what you guys
14 discussed about the products?

15 A. Size, retails, packaging.

16 Q. Did you draw any conclusions about the
17 competitors' products?

18 A. The only conclusion I remember talking
19 about is we were satisfied we had the best quality
20 product -- best quality packaging I should say.

21 Q. Why did you believe that?

22 A. We thought it conveyed a message better.

23 Q. Why did you think it conveyed the
24 message better?

1 A. It was more identifiable as a private
2 brand, a cetirizine product comparable to Zyrtec
3 than any other retailer.

4 Q. Why did you believe it was more
5 identifiable as a private brand version of Zyrtec
6 than the other competitors' products?

7 A. Just a gut feel between ourselves.

8 Q. Did the fact that the Walgreens product
9 had the name WAL-ZYR have any impact on your belief
10 that it was more identifiable than competitors'
11 products?

12 A. I don't know. It would have been kind
13 of a package deal, color, packaging, name.

14 Q. Are you aware of any other companies
15 that use a portion of the Zyrtec name in the name
16 for their private label cetirizine product?

17 A. I am not.

18 Q. Prior to the launch, did you discuss
19 what level you would set the WAL-ZYR product price
20 at?

21 A. Before the launch?

22 Q. Yes.

23 A. Yes.

24 Q. Who did you discuss that with?

1 they were actually distributed?

2 A. No. To my knowledge, no.

3 Q. At the time you were responsible for the
4 Zyrtec product for Walgreens, did McNeil ever pay
5 for advertising of Zyrtec in Walgreens' ROTO
6 circulars?

7 A. We had an advertising fund.

8 Q. Can you describe that advertising fund
9 to me?

10 A. We were given a bucket of money to
11 market Zyrtec, and the advertising, we called the
12 co-op dollars, came out of that fund.

13 Q. Do you recall what the Zyrtec
14 advertising fund was while you were the category
15 manager for the cough/cold/allergy category?

16 A. I do not. Probably safe to say no at
17 this point.

18 Q. Do you have an idea of what the
19 approximate value was? Was it tens of thousands,
20 1 million?

21 A. Just co-op or the overall fund?

22 Q. Let's start with co-op.

23 A. I'm going to say it was about 700,000.

24 Q. What about the overall fund?

1 do you know?

2 A. No.

3 Q. What's the packaging inside Opposer's
4 Exhibit 7?

5 A. That's what's called blister packs.

6 Q. I show you what's been marked Opposer's
7 Exhibit 8. Let me know when you have had a chance
8 to look at it.

9 A. Okay.

10 Q. What is Opposer's Exhibit 8?

11 A. This is a package of 30-count WAL-ZYR.

12 Q. Was the 30-count WAL-ZYR product -- when
13 did the 30-count WAL-ZYR product become available?

14 A. The 30-count became available end of
15 January 2008.

16 Q. And when it first became available, was
17 it in the packaging that we see here as Opposer's
18 Exhibit 8?

19 A. No, it was not.

20 Q. What kind of packaging was it in?

21 A. It was in more of the blister type
22 packaging such as Exhibit 7.

23 Q. And when was the switch made to the
24 packaging that we see in Opposer's Exhibit 8?

1 A. I'm not entirely sure when that -- when
2 the package hit stores. It was a transition.

3 Q. Can you give me a rough idea of the
4 season?

5 A. Best guess August/September 2008.

6 Q. Why did Walgreens switch to -- from the
7 blister pack version of the 30-count to the bottle
8 format?

9 A. This looked more comparable to the
10 Zyrtec package.

11 Q. Why didn't Walgreens switch the 60-count
12 bottle package to the format shown in Opposer's
13 Exhibit 8?

14 A. There was no packaging for Zyrtec in a
15 60-count.

16 Q. If you could look at what's previously
17 marked Opposer's Exhibit 10, please. Let me know
18 when you are ready.

19 A. Okay.

20 Q. What is Opposer's Exhibit 10?

21 A. This is a package of WAL-ZYR 150-count
22 tablets.

23 Q. Was the 150-count WAL-ZYR package --
24 when did that become available?

1 describe what you have as Exhibit 44?

2 A. Exhibit 44 is a bottle of WAL-ZYR
3 150-count tablets.

4 Q. Do you know why the 150-count tablets
5 weren't converted to the package form we see in
6 Opposer's Exhibit 8 with the 30-count?

7 A. Again, there was no Zyrtec 150-count.

8 Q. Do you know what count sizes the Zyrtec
9 product comes in that's sold at Walgreens?

10 A. When I was at the desk, it was I believe
11 just a 14-count, 30-count, and 45-count for the
12 10-milligram.

13 Q. Are there other versions of Zyrtec
14 besides the 10 milligrams?

15 A. There is a 5-milligram children's.

16 Q. The package that we have as Exhibit 13,
17 that appears to be 5-count; is that correct?

18 A. Correct.

19 Q. So do you also recall that there was a
20 5-count product available for Zyrtec?

21 A. Yes.

22 Q. Does Walgreens sell a 5-count WAL-ZYR
23 product or has it ever?

24 A. I believe we did.

1 Q. What about Zyrtec?

2 A. Zyrtec -- well, but, again, that's
3 cetirizine. So I would consider that a different
4 competitor.

5 Q. Why would you consider that a different
6 competitor?

7 A. Because it's cetirizine. It would be a
8 competitor. I'm not sure if I am answering your
9 question correctly.

10 Q. You are answering my question the way
11 you want to answer it which is obviously correctly,
12 so that's fine.

13 A. Yes. Zyrtec would be a competitor for
14 Zyrtec then -- or for WAL-ZYR.

15 Q. So when you are thinking about -- well,
16 first let me ask: Are there any other products
17 besides Claritin, Benadryl, Zyrtec, and then
18 private label brands, Claritin and Benadryl, that
19 you would consider products that compete with
20 WAL-ZYR?

21 A. No.

22 Q. And why do you consider those to be the
23 WAL-ZYR competitive products?

24 A. Because they are for allergies.

1 tried to communicate through advertising that
2 WAL-ZYR was a less expensive alternative to Zyrtec?

3 A. Just pure price point.

4 Q. And by pure price point do you just mean
5 the product cost as opposed to a per pill cost?

6 A. Product retail, correct.

7 Q. Did Walgreens also try to get the
8 message across that WAL-ZYR was -- did Walgreens
9 also try to get the message across in its
10 advertising that WAL-ZYR was comparable to Zyrtec?

11 A. Yes, via the Compare to Zyrtec slug we
12 would put in there.

13 Q. Anything other than the Compare to
14 Zyrtec slug that would get that message across?

15 A. Not that I am aware of. The only other
16 thing we would put is we would list cetirizine in
17 the ad.

18 Q. For both the ads for the WAL-ZYR and the
19 Zyrtec?

20 A. Correct.

21 Q. We talked previously about the ROTO
22 circulars and the fact that sometimes though not
23 always that WAL-ZYR and Zyrtec would both appear in
24 the same circular; is that right?

1 A. Correct.

2 Q. And generally when they appeared in the
3 same circular, would they appear adjacent to each
4 other?

5 A. Not always.

6 Q. Do you have a rough idea of whether it
7 happened more often than not?

8 A. I don't.

9 Q. And who made the decision about whether
10 the products would appear adjacent to each other
11 when they were in the same circular?

12 A. Ad layout was all at the discretion of
13 advertising.

14 Q. Could you make a suggestion as to that.

15 A. Yes, we could.

16 Q. Did you make suggestions about the
17 relative placement of Zyrtec and WAL-ZYR?

18 A. Yes.

19 Q. What was your recommendation?

20 A. Side by side.

21 Q. And why did you suggest that?

22 A. Again, we wanted to show customers that
23 the WAL-ZYR had the same quality as Zyrtec at a
24 lower price.

1 Q. The location of each product on a shelf.

2 A. No. That's a by-plano basis.

3 Q. What does that mean?

4 A. Each plano could be different.

5 Q. What's a plano?

6 A. Oh, plano is a little diagram that shows
7 what goes where.

8 Q. Let me show you what's previously been
9 marked as Plaintiff's -- a copy of what's
10 previously been marked Opposer's Exhibit 21. You
11 could just look at that and let me know when you
12 are ready.

13 A. Okay.

14 Q. Could you tell me what I am looking at
15 with Opposer's Exhibit 21?

16 A. This is a copy of our what we call
17 planogram.

18 Q. What is it, planogram?

19 A. This would be cough/cold and allergy.

20 Q. What does this planogram tell me?

21 A. It tells you the direction that you have
22 the product in the department and just the location
23 of the product.

24 Q. So is this basically an instruction to

1 stores on where to place products on shelves?

2 A. Yes.

3 Q. And in connection with the WAL-ZYR and
4 Zyrtec products, what were instructions to stores
5 on how to place those products on the shelves?

6 A. Based on this plano, Zyrtec and WAL-ZYR
7 would have been instructed to be placed in the last
8 section, last three-foot section. They are defined
9 by three-foot sections.

10 Q. Separate from the specific plano, was
11 there any particular policy about the placement of
12 Zyrtec and WAL-ZYR on Walgreen store shelves?

13 A. I'm sorry. Are you asking are there any
14 other planograms?

15 Q. No, not any specific planograms but any
16 general policies of how those products would be
17 placed on shelves.

18 A. No. The policy would be whatever the
19 planogram showed.

20 Q. Did Walgreens generally display the
21 WAL-ZYR -- was Walgreens' policy as shown in the
22 planogram generally to place the WAL-ZYR and Zyrtec
23 products adjacent to each other on shelves?

24 A. When you mean adjacent --

1 Q. Next to in some format either, you know,
2 to the right or to the left of or up above or
3 below?

4 A. Yes.

5 Q. And why did Walgreens do that?

6 A. Again, so we could make sure the
7 customers understood that WAL-ZYR was the private
8 brand equivalent of Zyrtec.

9 Q. Do you think that placing the WAL-ZYR
10 and Zyrtec products adjacent to each other on
11 shelves encourages consumers to choose WAL-ZYR over
12 Zyrtec?

13 A. No.

14 Q. Why not?

15 A. I don't have any studies or facts to
16 prove that.

17 Q. Do you have any studies or facts to
18 prove that placing them next to each other doesn't
19 encourage consumers to choose WAL-ZYR over Zyrtec?

20 A. No.

21 Q. For Walgreens other private label
22 versions of national brands, for example, WAL-ITIN
23 or WAL-DRYL or WAL-PROFEN, is it generally
24 Walgreens' policy to place its store brand private

1 RX table, potentially the same one.

2 Q. Yes, I see that. And then just to the
3 right of that?

4 A. To the right of that top, that was an RX
5 rack that was used.

6 Q. What is an RX rack?

7 A. That's a plastic rack that we have that
8 sits on the RX counter.

9 Q. Do you also have those types of racks
10 that sit like by cash registers?

11 A. I'm going to say I don't know. The only
12 one I know of is the RX rack.

13 Q. And then below that, the last picture?

14 A. Honestly, I don't know from that picture
15 what that could be.

16 Q. If you could look at what's previously
17 been marked or a copy of what's previously been
18 marked Opposer's Exhibit 28.

19 Let me know when you are ready.

20 A. Okay.

21 Q. Have you ever seen Opposer's Exhibit 28
22 before today?

23 A. This particular one I'm not sure.

24 Q. Do you know what we are looking at in

1 Opposer's Exhibit 28?

2 A. Based on the title, it would have been
3 the store entrance poster we had for the Zyrtec
4 launch.

5 Q. Do you know if there were store entrance
6 posters used in connection with the Zyrtec launch?

7 A. There were.

8 Q. Did they look like the ones depicted in
9 this exhibit?

10 A. Exactly I do not know.

11 Q. Do these generally look like probably
12 what they look like as far as you remember?

13 A. As far as I remember, yes.

14 Q. Except bigger, I presume?

15 A. Bigger.

16 Q. Turning to the next page, there is a
17 handwritten comment at the top of that page. Is
18 that your handwriting?

19 A. That is not.

20 Q. Do you know whose handwriting that is?

21 A. I don't.

22 Q. Looking still at Opposer's Exhibit 28,
23 the Zyrtec launch posters, do you see the legend at
24 the bottom of the posters that says, "Proven

1 allergy relief E-Z at Walgreens"?

2 A. Yes.

3 Q. Do you know whether that slogan we will
4 call it was actually used at Walgreens stores in
5 connection with the Zyrtec launch?

6 A. I believe it was.

7 Q. Do you know who developed that slogan?

8 A. That was a collaborative effort between
9 Walgreens and the folks at J&J.

10 Q. Were these launch posters -- would they
11 have been -- let me take that question back.

12 Was there any advertising in Walgreens
13 stores for the Zyrtec over-the-counter product
14 before the product was actually available on
15 shelves?

16 A. We had two to three what we call teaser
17 ads, just "Zyrtec is coming."

18 Q. When you say you had teaser ads, what
19 form were those in?

20 A. In the ROTO, the circular.

21 Q. Other than in the circular, did you have
22 any store advertisements that were there before the
23 Zyrtec actually launched?

24 A. In the basic department, we had -- I

1 percent Walgreens. We had input. That was about
2 it.

3 Q. Do you know why the slogan uses E hyphen
4 Z instead of the word "Easy"?

5 A. Yes. We thought that E and Z would be a
6 play on the Z in Zyrtec.

7 Q. When you were working together to
8 develop this slogan, did you have any idea that
9 Zyrtec would be trying to emphasize the Z in its
10 Zyrtec name?

11 A. Emphasize meaning it was a little
12 bigger?

13 Q. No, in terms of -- maybe a little bit
14 bigger but in terms of wanting to draw attention to
15 the Z in the Zyrtec name.

16 A. Not that I recall.

17 Q. If you could look at a copy of what's
18 previously been marked Opposer's Exhibit 29. And
19 let me know when you are ready, please.

20 A. Okay.

21 Q. Have you ever seen the document that's
22 been marked Opposer's Exhibit 29 before?

23 A. I have.

24 Q. When?

1 and say, "Hey, I want to send a comment," the
2 stores will send it to store operations and store
3 operations will forward that to us.

4 Q. "Us" being the purchasing department?

5 A. Purchasing. Sorry.

6 Q. Okay. What about e-mails?

7 A. The same protocol there.

8 Q. And what about phone calls?

9 A. Same there.

10 Q. So eventually any consumer comment about
11 a product makes its way to purchasing presumably?

12 A. Yes.

13 Q. What about if a consumer walks up to a
14 store clerk and says, "Do the people who make
15 Zyrtec also make WAL-ZYR?" Are the store clerks
16 required to report that to the company?

17 A. Not unless the customer asks for a
18 response from corporate.

19 Q. Are you aware of any communications from
20 consumers about the WAL-ZYR product?

21 A. Any type of communication?

22 Q. Any type, yes.

23 A. Yes.

24 Q. What types of things were consumers

1 I N D E X

2 DAN POTTS EXAMINATION

3 BY MS. POPP-ROSENBERG

4 (AM SESSION) 3

5 (PM SESSION) 137

6 BY MS. STEVENS 234

7

8 E X H I B I T S

9 OPPOSER DEPOSITION EXHIBIT MARKED FOR ID

10 No. 31 13 22

11 No. 32 14 24

12 No. 33 32 1

13 No. 34 37 14

14 No. 35 48 22

15 No. 36 56 13

16 No. 37 77 19

17 No. 38 80 6

18 No. 39 82 4

19 No. 40 114 12

20 No. 41 115 22

21 No. 42 144 14

22 No. 43 153 14

23 No. 44 156 19

24 No. 45 208 18

1

2

E X H I B I T S (CONT'D)

3

OPPOSER DEPOSITION EXHIBIT

MARKED FOR ID

4

No. 46

226

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No. 47

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No. 48

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No. 49

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF L A K E)

4 I, BARBARA A. DeMICCO, C.S.R. No.

5 84-2946, a Notary Public within and for the County

6 of Lake, State of Illinois, and a Certified

7 Shorthand Reporter of said state, do hereby

8 certify:

9 That previous to the commencement of the
10 examination of the witness, the witness was duly
11 sworn to testify the whole truth concerning the
12 matters herein;

13 That the foregoing deposition transcript
14 was reported stenographically by me, was thereafter
15 reduced to typewriting under my personal direction
16 and constitutes a true record of the testimony
17 given and the proceedings had;

18 That the said deposition was taken
19 before me at the time and place specified;

20 That the reading and signing by the
21 witness of the deposition transcript was agreed
22 upon as stated herein;

23 That I am not a relative or employee or
24 attorney or counsel, nor a relative or employee of

1 such attorney or counsel for any of the parties
2 hereto, nor interested directly or indirectly in
3 the outcome of this action.


4 IN WITNESS WHEREOF, I do hereunto set my
5 hand and affix my seal of office at Chicago,
6 Illinois, this 5th day of May, 2009.

7
8
9
10 BARBARA A. DeMICCO, C.S.R. No. 84-2946
11 Notary Public, Lake County, Illinois.
12 My commission expires May 15, 2009.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

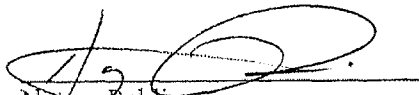
McNEIL-PPC, Inc.	)	In re Trademark Application
	)	Serial No. 76/682,070
Opposer,	)	Opposition No. 91184978
	)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

I hereby certify that I have read the foregoing transcript of my deposition given on May 1, 2009 in Deerfield, Illinois, consisting of Pages 1 to 236, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.

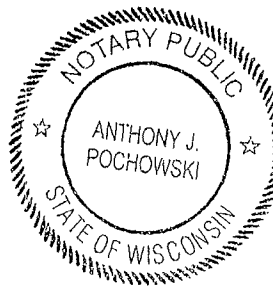


DAN POTTS

SUBSCRIBED AND SWORN TO before me this 16 day
of July, A.D. 2009.



Notary Public



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


McNEIL-PPC, Inc.	)	In re Trademark Application
	)	Serial No. 76/682,070
Opposer,	)	Opposition No. 91184978
	)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

ERRATA SHEET FOR
DEPOSITION OF DAN POTTS
TAKEN MAY 1, 2009

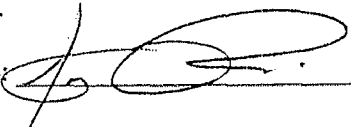
I, Dan Potts, do hereby certify that I have read the foregoing transcript of my testimony,
taken on May 1, 2009, and have signed it subject to the following changes:

<u>Page</u>	<u>Line(s)</u>	<u>Change</u>	<u>To</u>	<u>Reason for Change</u>
12	12	Cing-Mars	Cinq-Mars	Typographical error

Date: 7/16/2009

Signed: 

Sworn and subscribed to before me
on this 16 day of July, 2009.

Notary Public: 

My commission expires 12-25-2011.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McNEIL-PPC, Inc.	)	In re Trademark Application
	)	Serial No. 76/682,070
Opposer,	)	Opposition No. 91184978
	)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

CONFIDENTIALITY DESIGNATION SHEET FOR
DEPOSITION OF DAN POTTS
TAKEN MAY 1, 2009

The following testimony should be marked as "CONFIDENTIAL":

- Page 32, line 11 through page 22, line 14
- Page 34, line 20 through page 35, line 1
- Page 36, lines 1-21
- Page 37, line 22 through page 38, line 24
- Page 56, line 21 through page 57, line 17
- Page 69, line 15 through page 70, line 6
- Page 70, line 12 through page 71, line 6
- Page 78, line 5 through page 80, line 2
- Page 80, line 16 through page 81, line 24
- Page 82, lines 20-23
- Page 101, line 6 through page 103, line 8
- Page 117, line 12 through page 119, line 20
- Page 122, line 4 through page 123, line 1
- Page 141, line 20 through page 142, line 16
- Page 143, lines 5-14
- Page 145, line 4 through page 146, line 15
- Page 175, lines 11-20
- Page 177, lines 3-19
- Page 180, line 21 through page 183 line 15
- Page 190, line 5 through page 193, line 18
- Page 199, lines 7-24
- Page 200, line 23 through page 202, line 11
- Page 233, lines 9-21

The following testimony should be marked as "HIGHLY CONFIDENTIAL":

- Page 140, line 13 through page 141, line 5
- Page 164, line 16 through page 165, line 9
- Page 227, line 17 through page 228, line 6

**The following testimony should be marked as "TRADE SECRET /
COMMERCIALLY SENSITIVE":**

- Page 148, lines 6-21
- Page 149, line 20 through page 150, line 5
- Page 219, line 12 through page 225, line 24
- Page 226, line 14 through page 227, line 16
- Page 230, line 22 through page 232, line 18

TEAR ALONG PERFORATION, PEEL OFF PAPER AND PUSH PRODUCT
THROUGH FOIL. IF DIFFICULT TO OPEN USE SCISSORS.

W19

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L 29 9 s. resodda

NDC 0363-0458-66

Compare to Zyrtec®
active ingredient*

Walgreens

NEW!

WAL-ZYR™

Cetirizine Hydrochloride Tablets, 10mg /Antihistamine

ALL DAY ALLERGY

Indoor & Outdoor
ALLERGIES



24 HOUR

Allergy

24 Hour Relief of:

- Runny Nose • Itchy, Watery Eyes
- Sneezing • Itchy Throat or Nose



Actual Size

14 TABLETS

Drug Facts

Active ingredient (in each tablet)

Cetirizine HCl 10 mg.....Antihistamine

Uses

temporarily relieves these symptoms due to hay fever or other upper respiratory allergies:

- runny nose ■ sneezing
- itchy, watery eyes
- itching of the nose or throat

Warnings

Do not use if you have ever had an allergic reaction to this product or any of its ingredients or to an antihistamine containing hydroxyzine.

Ask a doctor before use if you have liver or kidney disease. Your doctor should determine if you need a different dose.

Ask a doctor or pharmacist before use if you are taking tranquilizers or sedatives.

When using this product

- drowsiness may occur
- avoid alcoholic drinks
- alcohol, sedatives, and tranquilizers may increase drowsiness
- be careful when driving a motor vehicle or operating machinery

Stop use and ask a doctor if an allergic reaction to this product occurs. Seek medical help right away. ►

Drug Facts (continued)

If pregnant or breast-feeding:

- if breast-feeding: not recommended
 - if pregnant: ask a health professional before use.
- Keep out of reach of children.** In case of overdose, get medical help or contact a Poison Control Center right away.

Directions

adults and children
6 years and over

one 10 mg tablet once daily;
do not take more than one
10 mg tablet in 24 hours.
A 5 mg product may be
appropriate for less severe
symptoms.

adults 65 years
and over

ask a doctor

children under
6 years of age

ask a doctor

consumers with liver
or kidney disease

ask a doctor

Other information

- do not use if blister unit is broken or torn
- store between 20° to 25°C (68° to 77°F)

Inactive ingredients

corn starch, FD&C blue #1, hypromellose, lactose, magnesium stearate, polydextrose, polyethylene glycol, povidone, titanium dioxide, triacetin

ITEM 542429



Questions? If you have questions of a medical nature, please contact your pharmacist, doctor or health care professional.

*This product is not manufactured or distributed by McNeil Consumer Healthcare, division of McNeil-PPC, Inc., distributor of Zyrtec®.

Walgreens

WAL-ZYRTM

Cetirizine Hydrochloride Tablets, 10mg /Antihistamine

ORG 1107

Distributed by: Walgreen Co.,
200 Wilmot Rd., Deerfield, IL
60015-4616



100% Satisfaction Guaranteed with all
Walgreens Products or Your Money Back.
www.walgreens.com

: 4H266 94 C1

8 A E 1 1 6 T
E X P 1 2 . 0 9

Walgreens

Compare to Zyrtec® active ingredient*

NDC 0363-0458-39

WAL-ZYR™

Cetirizine Hydrochloride Tablets, 10mg /Antihistamine

ALL DAY ALLERGY

Indoor & Outdoor
ALLERGIES



Allergy

24 Hour Relief of:

Sneezing;
Itchy, Watery Eyes;
Runny Nose;
Itchy Throat or Nose

Actual Size

TABLETS



30 TABLETS-10 mg each

Walgreens

NDC 0363-0458-39

WAL-ZYR™

Cetirizine Hydrochloride Tablets, 10mg /Antihistamine

ALL DAY ALLERGY

Indoor & Outdoor
ALLERGIES

Allergy

30 TABLETS-10 mg each



Active ingredient (in each tablet)
Cetirizine HCl 10 mg
Uses temporarily relieves these symptoms:
■ runny nose ■ sneezing ■ itchy, watery eyes
Warnings Do not use if you are taking other antihistamine ingredients or to an antihistamine. Do not use if you have liver or kidney disease. Consult your doctor or pharmacist before using this product. ■ drowsiness may occur. Do not drink alcohol or use tranquilizers may increase drowsiness. Do not operate machinery. Stop use and ask your doctor for medical help right away if you experience drowsiness. Not recommended if pregnant, nursing, or taking other medications. In case of overdose, call your doctor. Directions Adults and children 12 years of age and older: 1 tablet twice daily.

W1988

Opposer's En No 8

4-16-09 BD

24 HOUR

Active ingredient (in each tablet)
cetirizine HCl 10 mg.....
temporarily relieves these symptoms:
runny nose ■ sneezing ■ itchy, watery eyes
Warnings Do not use if you have ever had an allergic reaction to any of the ingredients or to an antihistamine compound. Do not use if you have liver or kidney disease. Your doctor should be consulted before use if you are taking any other medicine. This product ■ drowsiness may occur. Alcohol and tranquilizers may increase drowsiness. Do not operate machinery. Stop use and ask a doctor for medical help right away. If pregnant or breastfeeding, consult your doctor. Not recommended ■ if pregnant: ask a health care provider. ■ if nursing: ask a health care provider. ■ children. In case of overdose, get medical help or contact a Poison Control Center. **Directions** Adults and children 6 years of age and older: Take 1 tablet twice daily.

W1988

Opposer's Ex No 8

4-16-09 BD

Drug Facts

Active ingredient (in each tablet)

Cetirizine HCl 10 mg

Purpose

Antihistamine

Uses

temporarily relieves these symptoms due to hay fever or other upper respiratory allergies:

- runny nose ■ sneezing
- itchy, watery eyes
- itching of the nose or throat

Warnings

Do not use if you have ever had an allergic reaction to this product or any of its ingredients or to an antihistamine containing hydroxyzine.

Ask a doctor before use if you have liver or kidney disease. Your doctor should determine if you need a different dose.

Drug Facts (continued)

Ask a doctor or pharmacist before use if you are taking tranquilizers or sedatives.

When using this product

- drowsiness may occur
- avoid alcoholic drinks
- alcohol, sedatives, and tranquilizers may increase drowsiness
- be careful when driving a motor vehicle or operating machinery

Stop use and ask a doctor if an allergic reaction to this product occurs. Seek medical help right away.

If pregnant or breast-feeding:

- if breast-feeding: not recommended
- if pregnant: ask a health professional before use.

Keep out of reach of children. In case of overdose, get medical help or contact a Poison Control Center right away.

Directions

adults and children 6 years and over	one 10 mg tablet once daily; do not take more than one 10 mg tablet in 24 hours. A 5 mg product may be appropriate for less severe symptoms.
adults 65 years and over	ask a doctor
children under 6 years of age	ask a doctor
consumers with liver or kidney disease	ask a doctor

Other information

- store between 20° to 25°C (68° to 77°F)

Inactive ingredients

corn starch, FD&C blue #1, hypromellose, lactose, magnesium stearate, polydextrose, polyethylene glycol, povidone, titanium dioxide, triacetin

Questions? 1-800-719-9260

Distributed by: Walgreen Co.,
200 Wilmot Rd., Deerfield, IL 60015-4616
100% Satisfaction Guaranteed
www.walgreens.com

REV 0908

: 4H239 94 S1

**Do not use if
printed foil
under cap
is broken
or missing**

*This product is not
manufactured or
distributed by
McNeil Consumer
Healthcare, division
of McNeil-PPC, Inc.,
distributor of
Zyrtec®.

ITEM 517157



Purpose

Antihistamine

temporarily relieves these symptoms due to hay fever or other upper respiratory allergies:

■ runny nose or throat

■ sneezing

■ itchy, watery eyes

■ itching of the nose or throat

Do not use if you have ever had an allergic reaction to this product or any of its ingredients or to an antihistamine containing hydroxyzine.

Ask a doctor before use if you have liver or kidney disease. Your doctor should determine if you need a different dose.

When using this product

■ avoid alcoholic drinks

■ alcohol, sedatives, and tranquilizers may increase drowsiness

■ be careful when driving a motor vehicle or operating machinery

Stop use and ask a doctor if an allergic reaction to this product occurs. Seek medical help right away.

If pregnant or breast-feeding:

■ if breast-feeding: not recommended

■ if pregnant: ask a health professional before use.

more than one 10 mg tablet in 24 hours. A 5 mg product may be appropriate for less severe symptoms. **Adults 65 years and over** ask a doctor.

6 years of age: ask a doctor. **Consumers with liver or kidney disease:** ask a doctor.

Other information ■ store between 20° to 25°C (68° to 77°F)

Inactive ingredients corn starch, FD&C blue #1, hypromellose, lactose, magnesium stearate, polydextrose, polyethylene glycol, povidone, titanium dioxide, triacetin

Questions or comments? 1-800-719-9260

Do not use if printed foil under cap is broken or missing

Distributed by: Walgreen Co.,

200 Wilmot Rd.

Deerfield, IL 60015-4616

100% Satisfaction Guaranteed

www.walgreens.com

ZYRTEC® Launch

Store Entrance Poster

NEW! Original Prescription Strength

ZYRTEC

Cetirizine HCl

ALLERGY

24 Indoor & Outdoor
hour Relief of

- Sneezing
- Runny Nose
- Itchy, Watery Eyes
- Itchy Throat or Nose

Get it NOW
Without a Prescription

Proven allergy relief. **E-Z** at *Walgreens*

Use only as directed.

NEW! **#1** Prescribed Allergy Medicine*

ZYRTEC

Cetirizine HCl

ALLERGY

24 hour Relief of

- Sneezing
- Runny Nose
- Itchy, Watery Eyes
- Itchy Throat or Nose

Indoor & Outdoor Allergies

Get it NOW
Without a Prescription

Proven allergy relief. **E-Z** at *Walgreens*

Use only as directed.

*All Prescriptions 2006-2007 © Walgreens, Inc.

Oppen 28
FOR ID., AS OF 4-16-09

* possible: #1 prescribed allergy medication.

NEW!

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